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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1959

No. 278

HARRY NEEDELMAN, PETITIONER,

vs.

UNITED STATES OF AMERICA.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI FILED AUGUST 4, 1959

CERTIORARI GRANTED OCTOBER 12, 1959

SUPREME COURT OF THE UNITED STATES

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HARRY NEEDELMAN, PETITIONER,

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[fol. 1]

IN UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA

UNITED STATES OF AMERICA, Plaintiff,

vs.

HARRY NEEDELMAN and WALTER WAXMAN, Defendants.

[fol. 2]

INDICTMENT IN CASE NO. 9479-M-Cr.—Filed October 18, 1955

The Grand Jury charges:

That from on or about August 6, 1955, and continuing through and including September 23, 1955, in Dade County, in the Southern District of Florida,

HARRY NEEDELMAN and WALTER WAXMAN

did unlawfully, wilfully and knowingly combine, conspire, confederate and agree between themselves and with Lillian Fredericks, Sally Rossman, David Komisarow, and Bernice Sachs and other persons to the Grand Jurors unknown, to violate the laws of the United States, to wit, Title 26, United States Code, Section 4705(a), that is to say, to sell, barter, exchange and give away narcotic drugs, to wit, codeine amidone, also known as dolophine, also known as methadon, and demerol, also known as isonipecaine, not in pursuance of written orders of the persons to whom said narcotic drugs were sold, bartered, exchanged and given on forms issued in blank for that purpose by the Secretary or his delegate.

That in furtherance of the said conspiracy and to effect the objects thereof, the following overt act was committed;

Overt Act

That on or about September 19, 1955, in Dade County, in the Southern District of Florida, Walter Waxman did sell [fol. 3] 2¼ one-grain codeine sulphate tablets to Abe Bruches.

A True Bill

Henry Hood, Foreman.

E. David Rosen, Assistant U. S. Attorney.

IN UNITED STATES DISTRICT COURT

INDICTMENT IN CASE No. 10,348-M-Cr.—Filed October 2, 1957

The Grand Jury charges:

That on or about the 8th day of August, 1955, in Dade County, in the Southern District of Florida,

HARRY NEEDLEMAN

did sell, barter, exchange, give away and cause to be sold, bartered, exchanged and given away narcotic drugs, to wit, 24 tablets, each containing 10 milligrams of amidone, also known as dolophine, also known as methadon, to Gerald Miller, not in pursuance of the written order of the person to whom said narcotic drugs were sold, bartered, exchanged and given on forms issued in blank for that purpose by the Secretary or his delegate; in violation of Title 26, United States Code, Section 4705 (a).

Second Count

The Grand Jury further charges:

That on or about the 9th day of August, 1955, in Dade County, in the Southern District of Florida,

[fol. 4] HARRY NEEDLEMAN

did sell, barter, exchange, give away and cause to be sold, bartered, exchanged and given away narcotic drugs, to wit, 24 tablets, each containing 10 milligrams of amidone, also known as dolophine, also known as methadon, to Gerald Miller, not in pursuance of the written order of the person to whom said Narcotic drugs were sold, bartered, exchanged and given on forms issued in blank for that purpose by the Secretary or his delegate; in violation of Title 26, United States Code, Section 4705 (a).

Third Count

The Grand Jury further charges:

That on or about the 12th day of August, 1955, in Dade County, in the Southern District of Florida,

HARRY NEEDELMAN

did sell, barter, exchange, give away and cause to be sold, bartered, exchanged and given away narcotic drugs, to wit, 24 tablets, each containing 10 milligrams of amidone, also known as dolophine, also known as methadon, to Gerald Miller, not in pursuance of the written order of the person to whom said narcotic drugs were sold, bartered, exchanged and given on forms issued in blank for that purpose by the Secretary or his delegate; in violation of Title 26, United States Code, Section 4705 (a).

[fol. 5] Fourth Count

The Grand Jury further charges:

That on or about the 14th day of August, 1955, in Dade County, in the Southern District of Florida,

HARRY NEEDELMAN

did sell, barter, exchange, give away and cause to be sold, bartered, exchanged and given away narcotic drugs, to wit, 24 tablets, each containing 10 milligrams of amidone, also known as dolophine, also known as methadon, to Gerald Miller, not in pursuance of the written order of the person to whom said narcotic drugs were sold, bartered, exchanged and given on forms issued in blank for that purpose by the Secretary or his delegate; in violation of Title 26, United States Code, Section 4705 (a).

Fifth Count

The Grand Jury further charges:

That on or about the 17th day of August, 1955, in Dade County, in the Southern District of Florida,

HARRY NEEDELMAN

did sell, barter, exchange, give away and cause to be sold, bartered, exchanged and given away narcotic drugs, to wit, 24 tablets, each containing 10 milligrams of amidone, also known as dolophine, also known as methadon, to Gerald Miller, not in pursuance of the written order of the person to whom said narcotic drugs were sold, bartered, exchanged

[fol. 6] and given on forms issued in blank for that purpose by the Secretary or his delegate; in violation of Title 26, United States Code, Section 4705 (a).

Sixth Count

The Grand Jury further charges:

That on or about the 8th day of August, 1955, in Dade County, in the Southern District of Florida,

HARRY NEEDELMAN

did sell, barter, exchange, give away and cause to be sold, bartered, exchanged and given away narcotic drugs, to wit, 24 tablets, each containing 10 milligrams of amidone, also known as dolophine, also known as methadon, to Fidel Garcia, not in pursuance of the written order of the person to whom said narcotic drugs were sold, bartered, exchanged and given on forms issued in blank for that purpose by the Secretary or his delegate; in violation of Title 26, United States Code, Section 4705 (a).

Seventh Count

The Grand Jury further charges:

That on or about the 9th day of August, 1955, in Dade County, in the Southern District of Florida,

HARRY NEEDELMAN

did sell, barter, exchange, give away and cause to be sold, bartered, exchanged and given away narcotic drugs, to wit, 24 tablets, each containing 10 milligrams of amidone, also [fol. 7] known as dolophine, also known as methadon, to Fidel Garcia, not in pursuance of the written order of the person to whom said narcotic drugs were sold, bartered, exchanged and given on forms issued in blank for that purpose by the Secretary or his delegate; in violation of Title 26, United States Code, Section 4705 (a).

Eighth Count

The Grand Jury further charges:

That on or about the 12th day of August, 1955, in Dade County, in the Southern District of Florida,

HARRY NEEDELMAN

did sell, barter, exchange, give away and cause to be sold, bartered, exchanged and given away narcotic drugs, to wit, 24 tablets, each containing 10 milligrams of amidone, also known as dolophine, also known as methadon, to Fidel Garcia, not in pursuance of the written order of the person to whom said narcotic drugs were sold, bartered, exchanged and given on forms issued in blank for that purpose by the Secretary or his delegate; in violation of Title 26, United States Code, Section 4705 (a).

Ninth Count

The Grand Jury further charges:

That on or about the 14th day of August, 1955, in Dade County, in the Southern District of Florida,

HARRY NEEDELEMAN

did sell, barter, exchange, give away and cause to be sold, [fol. 8] bartered, exchanged and given away narcotic drugs, to wit, 24 tablets, each containing 10 milligrams of amidone, also known as dolophine, also known as methadon, to Fidel Garcia not in pursuance of the written order of the person to whom said narcotic drugs were sold, bartered, exchanged and given on forms issued in blank for that purpose by the Secretary or his delegate; in violation of Title 26, United States Code, Section 4705 (a).

Tenth Count

The Grand Jury further charges:

That on or about the 17th day of August, 1955, in Dade County, in the Southern District of Florida,

HARRY NEEDELMAN

did sell, barter, exchange, give away and cause to be sold, bartered, exchanged and given away narcotic drugs, to wit, 24 tablets, each containing 10 milligrams of amidone, also known as dolophine, also known as methadon, to Fidel Garcia, not in pursuance of the written order of the person to whom said narcotic drugs were sold, bartered, exchanged

and given on forms issued in blank for that purpose by the Secretary or his delegate, in violation of Title 26, United States Code Section 4705 (a).

Eleventh Count

The Grand Jury further charges:

That on or about the 9th day of August, 1955, in Dade [fol. 9] County, in the Southern District of Florida,

HARRY NEEDELMAN

did sell, barter, exchange, give away and cause to be sold, bartered, exchanged and given away narcotic drugs, to wit, 24 tablets, each containing 10 milligrams of amidone, also known as dolophine, also known as methadon, to Alice Buonauto, not in pursuance of the written order of the person to whom said narcotic drugs were sold, bartered, exchanged and given on forms issued in blank for that purpose by the Secretary or his delegate; in violation of Title 26, United States Code Section 4705(a).

Twelfth Count

The Grand Jury further charges:

That on or about the 11th day of August, 1955, in Dade County, in the Southern District of Florida,

HARRY NEEDELMAN

did sell, barter, exchange, give away and cause to be sold, bartered, exchanged and given away narcotic drugs, to wit, 24 tablets, each containing 10 milligrams of amidone, also known as dolophine, also known as methadon, to Alice Buonaiuto, not in pursuance of the written order of the person to whom said narcotic drugs were sold, bartered, exchanged and given on forms issued in blank for that purpose by the Secretary or his delegate; in violation of Title 26, United States Code, Section 4705 (a).

[fol. 10] Thirteenth Count

The Grand Jury further charges:

That on or about the 12th day of August, 1955, in Dade County, in the Southern District of Florida,

HARRY NEEDELMAN

did sell, barter, exchange, give away and cause to be sold, bartered, exchanged and given away narcotic drugs, to wit, 24 tablets, each containing 10 milligrams of amidone, also known as dolophine, also known as methadon, to Alice Buonaiuto, not in pursuance of the written order of the person to whom said narcotic drugs were sold, bartered, exchanged and given on forms issued in blank for that purpose by the Secretary or his delegate; in violation of Title 26, United Code, Section 4705 (a).

Fourteenth Count

The Grand Jury further charges:

That on or about the 14th day of August, 1955, in Dade County, in the Southern District of Florida,

HARRY NEEDELMAN

did sell, barter, exchange, give away and cause to be sold, bartered, exchanged and given away narcotic drugs, to wit, 24 tablets, each containing 10 milligrams of amidone, also known as dolophine, also known as methadon, to Alice Buonaiuto, not in pursuance of the written order of the person to whom said narcotic drugs were sold, bartered, [fol. 11] exchanged and given on forms issued in blank for that purpose by the Secretary or his delegate; in violation of Title 26, United States Code, Section 4705 (a).

Fifteenth Count

The Grand Jury further charges:

That on or about the 17th day of August, 1955, in Dade County, in the Southern District of Florida,

HARRY NEEDELMAN

did sell, barter, exchange, give away and cause to be sold, bartered, exchanged and given away narcotic drugs, to wit, 24 tablets, each containing 10 milligrams of amidone, also known as dolophine, also known as methadon, to Alice Buonaiuto, not in pursuance of the written order of the person to whom said narcotic drugs were sold, bartered,

exchanged and given on forms issued in blank for the purpose by the Secretary or his delegate; in violation of Title 26, United States Code, Section 4705(a).

A True Bill

J. W. Hendrick, Jr., Foreman.

....., Assistant U. S. Attorney.

IN UNITED STATES DISTRICT COURT

MOTION FOR PRODUCTION AND INSPECTION OF DOCUMENTS—
Filed October 17, 1957

Comes Now, the Defendants, by and through their undersigned attorneys, and moves the Court for an Order per-
[fol. 12] mitting them to inspect the books, papers, documents, memoranda and objects and particularly the contemporaneous notes made by the Government witness, Kenneth Rudd, who has previously testified in said cause and who is a material witness for the Government in said cause, made by the said Kenneth Rudd during his investigation and preparation for trial of said cause, and which said contemporaneous notes have already been referred to by the said Rudd in the previous trial of said cause, and by which testimony it was shown that said contemporaneous notes prepared by the said Rudd were of the events, activities related to his said testimony, and that the inspection and copying of said contemporaneous notes made by the said Rudd are material and necessary for the defendants to prepare their defense.

The defendant, Waxman, further moves the Court for an Order requiring the Government to produce to the defendant Waxman, or his attorney, a copy of the inventory of the stock of narcotics taken by the witness Rudd in the place of Business of Defendant Waxman, and which inventory was taken on or about September 28, 1955, by the said Rudd, and which he has previously testified to in his previous trial, but which inventory the said Rudd refused to furnish to the defendant at said trial.

Wherefore, each defendant moves the Court for an Order requiring the Government to produce said documents, or to

[fol. 13] yield them to inspect same and make copies of same.

Dan Chappell, Attorney for Defendant Walter Waxman.

Ernest E. Roberts, Attorney for Defendant Harry Needelman.

Certificate of Service (omitted in printing).

[fol. 14]

IN UNITED STATES DISTRICT COURT

ORDER ON MOTIONS TO CONSOLIDATE, FOR PRODUCTION AND INSPECTION OF DOCUMENTS AND MOTION TO SUPPRESS—November 1, 1957

This Cause coming on to be heard before me this day upon

1. Motion of the United States of America to consolidate the above-styled two cases;

2. Motion of Dan Chappell, who has substituted for Jack Kehoe as counsel for defendant Walter Waxman, and of Ernest E. Roberts, who has substituted for Harvie Duvall as counsel for defendant Harry Needelman, for production and inspection of documents; and

3. Motion of Walter Waxman to suppress, and the Court having heard argument of counsel for the respective parties and being otherwise fully informed in the premises, it is thereupon

Ordered and Adjudged:

(a) That the motion to consolidate be and the same is [fol. 15] hereby granted;

(b) That the motion for production and inspection of documents be and the same is hereby granted to the extent that counsel for the defendants shall be entitled to inspect, examine, photograph and/or copy any and all documents and any other material taken from either of the defendants;

(c) That the motion to suppress be and the same is hereby continued to the date of trial of these causes.

Done and Ordered in chambers at Miami, Florida, this 1st day of November, 1957.

Emett C. Choate, United States District Court.

IN UNITED STATES DISTRICT COURT

STIPULATION AS TO FACTS, ETC.—Filed November 13, 1957

It Is Hereby Stipulated and Agreed by and between the United States of America, the defendants, and counsel for the defendants that the following are uncontroverted facts and that this agreement and stipulation shall stand in the place of oral testimony, to wit:

1. That Codeine is an opiate derivative; that Demerol is also known as Isonipecaine; that Amidon, also known as Methadon, also known as Dolophine, has a chemical formula of 4,4-Diphenyl-6 Dimethylamino-Hepatone-3; that the aforenamed are narcotic drugs as defined in Title 26, United States Code, Section 4731;

[fol. 16] 2. That any document offered and received into evidence herein which ordered any of the above-named narcotic drugs when dispensed by Walter Waxman and/or by any of his employees whose initials appear on said documents were dispensed and distributed in the quality and quantity called for in said documents;

3. That the Codeine dispensed herein was received by the defendant Walter Waxman, trading as Medical Arts Pharmacy in the due course of business as prescribed by law, and was manufactured by Wyeth Laboratories, Philadelphia, Pennsylvania, under Control Nos. 63054 through and including 63073, and 63139 through and including 63148;

4. That the Methadon, also known as Dolophine, also known as Amidon, dispensed herein, was received by defendant Walter Waxman, trading as Medical Arts Pharmacy, in the due course of business, as prescribed by law,

and was manufactured by Ely Lilly Co., Indianapolis, Indiana, under Control Lot Nos. 650420, 646753 and 639533;

5. That the Demerol, also known as Isonipecaine, dispensed herein, was received by defendant Walter Waxman, trading as Medical Arts Pharmacy, in the due course of business, as prescribed by law, and was manufactured by Winthrop Laboratories, Rensselaer, New York, under Control Nos. 167NC and 430ND.

Dated at Miami, Florida, this 13th day of November, 1957.

[fol. 17] James L. Guilmartin, United States Attorney, By: Dave. , Assistant U.S. Attorney.

Don Chappell, Attorney for Walter Waxman, By: Walter Waxman.

Ernest E. Roberts, Attorney for Harry Needelman, By: Harry Needelman.

IN UNITED STATES DISTRICT COURT

JUDGMENT OF ACQUITTAL (CONSPIRACY CHARGE)—November 18, 1957

The Defendants, Harry Needelman and Walter Waxman, having moved the court for a Judgment of Acquittal, and the Court, having heard argument on the same, it is.

Ordered that the defendants motions for Judgment of Acquittal be, and the same are hereby granted, and the defendants, each of them, be discharged as to this case and this case only.

Done and Ordered at Miami, Florida, this 18th day of November, 1957.

Emett C. Choate, United States District Judge.

IN UNITED STATES DISTRICT COURT

VERDICT (SUBSTANTIVE CHARGE)—November 19, 1957

We, the Jury, find the Defendant, Harry Needelman,
[fol. 18]

Guilty as to count #1,
Guilty as to Count #2,
Guilty as to Count #3,
Guilty as to Count #4,
Guilty as to Count #5,
Guilty as to Count #6,
Guilty as to Count #7,
Guilty as to Count #8,
Guilty as to Count #9,
Guilty as to Count #10,
Guilty as to Count #11,
Guilty as to Count #12,
Guilty as to Count #13,
Guilty as to Count #14,
Guilty as to Count #15,

So Say We All.

O. C. Corbing, Foreman.

IN UNITED STATES DISTRICT COURT

MOTION FOR NEW TRIAL—Filed November 22, 1957

The defendant moves the Court to grant him a new trial for the following reasons:

1.

The verdict is contrary to the law.

[fol. 19]

2.

The verdict is contrary to the evidence.

3.

The verdict is contrary to the law and the evidence.

4.

The verdict is contrary to the weight of the evidence.

5.

The verdict is not supported by *substantial* evidence.

6.

The Court erred in denying defendant's motion for acquittal made at the conclusion of the Government's case.

7.

The Court erred in denying defendant's motion for acquittal made at the conclusion of all of the evidence.

8.

The testimony fails to show that the narcotics prescribed were not necessary for the relief of pain being suffered by the persons to whom the prescriptions were issued.

9.

It affirmatively appears from the testimony that the defendant was not within the jurisdiction of this Court at the time of the commission of the alleged offenses.

10.

The evidence fails to show that the persons to whom the prescriptions were issued were narcotic addicts.

[fol. 20]

11.

The evidence fails to show that the prescriptions issued to the persons receiving them were given for the purpose of satisfying their addiction to drugs.

Ernest E. Roberts, Attorney for defendant.

Certificate of Service (omitted in printing).

IN UNITED STATES DISTRICT COURT

ORDER GRANTING MOTION FOR NEW TRIAL AS TO COUNTS 11, 12, 13, 14 AND 15 AND DENYING MOTION FOR NEW TRIAL AS TO COUNTS 1 THROUGH 10, FILED IN CASE NO. 10,348-M-Cr.—December 5, 1957

This cause coming on to be heard on the defendant's motion for new trial, and the Court having heard argument of counsel and being otherwise fully advised, it is, thereupon,

Ordered, Adjudged and Decreed That the defendant's motion for new trial be granted as to Counts 11, 12, 13, 14 and 15; and it is further

Ordered, Adjudged and Decreed that the defendant's motion for new trial as to Counts 1 through 10, be and the same is hereby denied.

[fol. 21] Done and Ordered at Miami, Florida, this 5th day of December, 1957.

Emmett C. Choate, United States District Judge.

IN UNITED STATES DISTRICT COURT

JUDGMENT AND COMMITMENT IN CASE NO. 10,348-M-Cr.—December 6, 1957

On this 6th day of December, 1957, came the attorney for the government and the defendant appeared in person with counsel, Ernest Roberts, Esq.

It Is Adjudged that the defendant has been convicted upon a Verdict of Guilty by a Jury as to counts 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10, of the offenses of did sell, barter, exchange, give away, and cause to be sold, bartered, exchanged and given away, certain narcotic drugs, not in pursuance of written orders on blanks issued for such purposes, as required by law. 26 USC 4705 (a) and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court.

It Is Adjudged that the defendant is guilty as charged and convicted.

It Is Adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of Two Years [fol. 22] on each count 1 through 10, which sentences are to run concurrently. Said sentence is hereby suspended and the defendant is placed on probation with the Probation Officer of the Miami Division for a period of Three Years under the conditions of probation as outlined in the Court's order entered December 1, 1939, imposing Standing Conditions of Probation.

It Is Adjudged that the defendant pay a fine unto the United States of America in the sum of $500.00 on each count 1 through 10, making a total of $5,000.00, and upon default of payment of said fines that he stand committed to a panel institution as designated by the U. S. Attorney General until the payment of said fines or until discharged by due process of law. Fines to be paid within a period of ninety days.

It Is Ordered That the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment to the defendant.

Emett D. Choate, United States District Judge.

[fol. 23]

IN UNITED STATES DISTRICT COURT

ORDER DISMISSING COUNTS 11, 12, 13, 14, AND 15 OF INDICTMENT HEREIN—December 6, 1957

This cause coming on before me to be heard upon motion of the United States of America by and through its Assistant United States Attorney, for an order of dismissal as to Counts 11, 12, 13, 14 and 15 of the indictment filed herein, and the Court being fully advised in the premises, it is

Ordered and Adjudged that said motion is hereby granted and Counts 11, 12, 13, 14 and 15 of the indictment are hereby dismissed.

Done and Ordered at Miami, Florida, this 6th day of December, 1957.

Emett C. Choate, United States District Judge.

Motion

Comes now the United States of America, by and through its Assistant United States Attorney, and respectfully moves entry of the foregoing Order.

James L. Guilmartin, United States Attorney, By O. B. Cline, Jr., Assistant U. S. Attorney.

In United States District Court

Transcript of Sentence Proceedings Filed in Case No. 10,348-M-Cr.—Filed December 10, 1957

[fol. 24] Miami, Florida
December 6, 1957

Sentence Proceedings

Before: Hon. Emett C. Choate, United States District Judge.

For the Government: O. B. Cline, Asst US Attorney

For the Defendant: Ernest Roberts Esq.

The Court: As respects to the last five counts, I granted a new trial?

Mr. Cline: Yes, sir.

The Court: Dr. Needelman, do you have anything to say before sentence is pronounced against you?

Mr. Roberts: Judge, I would like to say a word on his behalf.

The Court: Yes, Mr. Roberts.

Mr. Roberts: I don't have to tell Your Honor that while we realize that the jury has passed on Dr. Needelman's guilt, as far as the world is concerned, he is guilty, I am sure that I do not have to tell Your Honor that Dr. Needelman feels that what he did was not in violation of any of [fol. 25] the laws of the United States. However, as I say, we know that the jury has passed on that, and Your Honor has passed on at least ten counts of the indictment; and in the passing of this sentence I know Your Honor is going to take into consideration Dr. Needelman's profession, what he has suffered so far in this case, and what he will suffer the rest of his life. What with attorney's fees and costs of the Court, the witness's fees and professional fees, the time that he has had to lose in his profession in the preparation of the trial of this case, it has cost him well over $10,000.00. He is going to be deprived of his medical license, and his ability to earn a livelihood for his wife and his two children; and I bring that to Your Honor's attention in the imposition of any sentence.

The Court: The Medical Association may or may not deprive him of his license. I hope they don't. I hope they think he should not be deprived of his license because undoubtedly he is a skilful Doctor. I don't know. I am not going to go back on the jury's verdict, but I personally feel that he was exceedingly careless in any event, and it is possible that the jury felt that way and found him guilty for that reason. I don't know. They shouldn't have on that basis, but being human beings they might have done so.

As I said before, I appreciate the fact that a professional man is terrifically punished by a conviction, or even by a charge, as far as that is concerned.

[fol. 26] Do you have anything else to say?

Mr. Roberts: That's all.

The Court: Dr. Needelman, do you want to say something?

The Defendant: No, sir.

The Court: Dr. Harry Needelman, the jury having found you guilty of the charges contained in each of the counts numbered 1 through 10 respectively of the indictment filed against you in case No. 10,348-M-Cr., and the Court having heretofore adjudged you guilty of those charges, the Court

now finds and adjudges you guilty of those charges; and it is the judgment of the Court and the sentence of the law, that you, Harry Needelman, be remanded to the custody of the Attorney General of the United States, or his authorized representative, to be imprisoned in a penal institution of the United States, for a period of two years on each of said charges, and that you pay a fine unto the United States of America in the amount of $500.00 on each of said charges, and upon failure to pay such fine you stand further committed to the custody of the Attorney General of the United States until payment of said fine, or until otherwise discharged in due course of law.

The terms of imprisonment are to run concurrently; and [fol. 27] the sentence of confinement in this case on each count is suspended, and you are placed upon probation with the Probation Officer of this Court for a period of three years under the standing conditions of probation as outlined in the Court's Order dated December 1, 1939, imposing standing conditions of probation.

Privilege of paying said fine over a period of ninety days is granted; so you can make arrangements to pay the fine, which means a total of $5,000.00.

Mr. Roberts: He, of course, will be released. He is not in custody, as I understand, Your Honor?

The Court: Well, now he is not in custody, be he is on probation at this moment. Now Doctor, remember that if you do violate the laws in any way, shape, or form, you are facing a ten year sentence. I do that for the reason that I still believe that perhaps you were just careless.

(Discussion as to Bond and payment of fine.)

The Court: I understand that you are going to nolle pros the five counts?

Mr. Cline: Yes, sir.

The Court: I think that is proper because I don't see how [fol. 28] the Court could convict him on those five counts in view of the testimony of the other Doctor. At the time I thought there was some reason to let it go before the jury, because the other Doctor said those dosages were too large in his opinion. They were unusually large, let's say that.

Certificate of Reporter (omitted in printing).

IN UNITED STATES DISTRICT COURT

NOTICE OF APPEAL—Filed December 10, 1957

Name and Address of Appellant: Harry Needelman, 310 East DiLido Drive, DiLido Island, Miami Beach, Florida. Name and Address of Appellant's Attorney: Ernest E. Roberts, 1401-5 Metropolitan Bank Building, Miami, Florida.

[fol. 29] Offense: Violation of Narcotic Law (26 USC 4705 (a)) ten counts. Concise Statement of Judgment and Sentence: Defendant adjudicated guilty on first ten counts of the indictment and sentenced on December 6, 1957 to two years confinement on each count, together with fine of $500.00 on each count; sentences to run concurrently and service of said sentence withheld and defendant placed on probation for a period of three years. Defendant allowed ninety days within which to pay fine.

Name of Institution where now confined, if not on bail: Not confined.

I, the above-named appellant, hereby appeal to the United States Court of Appeals for the Fifth Circuit from the above-stated judgment.

Dated: December 10, 1957.

Ernest E. Roberts, Attorney for appellant.

Certificate of service (omitted in printing).

[fol. 31]

IN UNITED STATES DISTRICT COURT

Transcript of Trial Proceedings Filed in Both Cases on March 10, 1958—Filed: March 10, 1958

The above entitled cases came on for hearing before the Hon. Emett C. Choate, US District Judge, and a jury duly and regularly sworn and empanelled to try the same in open Court, on November 13, 14, 18, 19 and 20 1957.

APPEARANCES:

O. B. Cline, Asst US Attorney, appearing on behalf of the Government.

Dan Chappell Esq., appearing on behalf of the Defendant, Waxman.

Ernest Roberts Esq., appearing on behalf of the Defendant, Needelman.

[fol. 36] Miss Sally Rossman was called as a witness on behalf of the Government, having first been duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Cline:

Q. Will you state your name, please?
A. Miss Sally Rossman.
Q. Where do you live, Miss Rossman?
A. 4455 Prairie Avenue on the Beach.
Q. By whom are you employed?
A. I beg your pardon?
Q. By whom are you employed?
A. Mount Sinai Hospital.
Q. Where were you employed during the period August 6, 1955 through September 23, 1955?
A. By Doctor Harry Needelman.

The Court: That is Doctor Needelman sitting there at the table, is that right?
The Witness: Yes, sir.

By Mr. Cline:

Q. Do you recognize him?
A. Yes.
Q. Point him out, please.
[fol. 37] A. The first gentleman in the blue suit.
Q. How long were you employed by Dr. Needelman?
A. From I believe, the beginning of June until sometime in November of that year.
Q. June through November of 1955. Is that correct?
A. Yes, sir.
Q. What was your capacity in the employ of Dr. Needelman? What were your duties?

A. I was principally doing lab work, assisting the Doctor and covering the front desk when needed.

Mr. Cline: Your Honor, these exhibits have markings on them, and with the Court's permission, I will have those markings for identification.

The Court: All right. You have no disagreement with that, Mr. Roberts?

Mr. Roberts: No, sir.

(Thereupon, the instruments were marked for identification as Government's Exhibits 1 through 31.)

By Mr. Cline:

Q. Miss Rossman, I hand you Government's Exhibits 1 through 31 for identification and ask you if you can identify those exhibits?

A. Identify them in what way? What do you want me to do?

[fol. 38] Q. Have you ever seen them before?

A. Yes.

Q. Do you recall when and where?

A. At the time of my employment with Dr. Needelman at the office.

Q. Is there any writing on any of these documents that you recognize as your own?

A. Yes, sir.

Q. What is the writing that you recognize?

A. Glancing through them quickly, "To be filled." I can see where it is my handwriting.

Q. Is there anything else on these documents that you recognize with your own handwriting?

A. There are dates. That is also mine.

The Court: You mean the words, "To be filled" on a certain day appear in your handwriting?

The Witness: Yes. Some of the dates were filled in by me, yes, sir.

The Court: Some of them?

The Witness: Yes, sir.

By Mr. Cline:

Q. Now, on these I want you to make sure whether it is your handwriting after the words. "To be filled" on each [fol. 39] of these exhibits, 1 through 31 for identification which you have in your hand, if you will, please.

A. There are a few that I cannot say for sure at this time.

Q. Will you please tell us those that you do know for sure are your writing?

A. This one I am not sure of.

The Court: What is that number?

Mr. Cline: 14.

By Mr. Cline:

Q. What part of it is it that you are not sure is yours?

A. The "8-12—55." It may be. I am not sure. And also this one.

The Court: What is the number of that?

Mr. Cline: No. 5.

The Witness: "9—21—55." The rest of them I think are mine.

(Thereupon the Court was adjourned until 1:45 P.M. of the same day, at which time the following proceedings took place.)

[fol. 40] By Mr. Cline:

Q. Are you the same lady that was on the witness stand this morning?

A. Yes, sir.

Q. In relation to Government's Exhibits 1 through 31 for identification shown to you, which you identified this morning, did you ever have any conversation with Dr. Needleman regarding these exhibits for identification?

A. What do you mean, as far as conversation?

The Court: Did you ever talk to him about them.

The Witness: Yes.

By Mr. Cline:

Q. Do you recall approximately when that was?

A. Prior to the Doctor's leaving.

Q. Approximately how long before he left?

A. I imagine it was within a week or ten days.

Q. Do you recall the approximate day Dr. Needelman left?

A. About August 6th.

Q. Now, where did that conversation take place?

A. In the office.

Q. In your office?

A. In Dr. Needelman's office.

Q. Who else besides yourself, if anyone, and Dr. Needelman was present?

[fol. 41] A. To my recollection, Miss Fredericks was also there, the other nurse in the office.

Q. I realize it has been sometime ago, but I wish you would to the best of your ability recall that conversation what you said and what Dr. Needelman said, and what instructions, if any, you received regarding these exhibits.

A. To the best of my recollection, the prescriptions were left and they were to be located in a drawer of the desk which was to my knowledge the only thing in the office itself which was under lock and key, and when the patients whose names appeared on the prescriptions came in they were to be their prescriptions.

Q. What were you to receive in exchange for these prescriptions, if anything?

A. A fee.

Q. What was the amount of that fee?

A. Well, that depended. There were different fees.

Q. Do you recall the approximate amount?

A. I believe that they varied—five or ten dollars.

Q. Do you recall dispensing any of these so-called prescriptions?

A. You mean giving them out?

Q. To the person named on them?

A. Yes.

Q. Will you relate, as best you can recall, what took [fol. 42] place in any conversation that you may have had. What took place and what did you do?

A. A patient would come in and in dealing with patients you get to know them by name, and the patient would come in and pay for their prescription and they would be given their prescription.

Q. And at that time you did what, as far as writing on them, anything?

A. The date that they came in would be filled in on the prescription.

Q. What, if anything, would they give you in return for this?

A. A fee.

Q. What did you do with that fee, if anything?

A. It was entered in the day book and the money was put into this locked drawer where we kept the money under lock and key.

Q. Do you know a Gerald Miller?

A. The name is familiar. I don't know today that I could put a face on it.

Q. Do you recall Fidele Garcia?

A. Just the name again.

Q. How about Harold Sachs?

A. The name, again, is familiar.

Q. How about Alice Buononito?

[fol. 43] A. Yes.

Q. How about Renee Pollack?

A. Yes.

Q. Where do you recall those names from?

A. Those are the names of patients that we saw at Dr. Needelman's office.

Q. Do you recall any of those named persons coming to the office of Dr. Needelman during that period from August 6th through September 23, 1955?

A. Yes.

Q. Do you recall if they all did at one time or another?

A. That I cannot say for sure. I was on vacation part of the time.

Q. Now, I believe the exhibits that you have had in your hand you have identified as saying that you wrote the words, "To be filled," and the date. Is that correct?

A. Yes, sir.

Q. What does that indicate to you that you did with these exhibits when the patient came in the office, if anything?

A. I don't understand your question. You say what did I do? I wrote the dates on them and the words, "To be filled".

Q. When did you write the dates on them? What occasioned you to write the second date?

A. It was the day the patient came in, the day the prescription was to be filled.

[fol. 44] Q. Who, if anyone, was present in the office when you gave these exhibits to the persons named on them?

A. Who was there besides myself?

Q. Yes, that's right.

A. Some of the time Miss Fredericks was also there and at times Dr. Szekely, and at times Dr. Grier was there.

Q. In the same room at the time you gave these exhibits out?

A. I couldn't say.

Q. When these persons named on these exhibits came to the office and you gave them these exhibits that you have identified here, did they see or have any conversation with anyone else, as a general rule?

A. Not necessarily.

Q. Now, I have here Government's Exhibits 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48—

Mr. Chappell: Your Honor please, in order to keep the record straight at this time I am going to object and move to strike all of this witness' testimony to date as it might affect the defendant Waxman.

The Court: I will overrule the objection and deny the motion without any prejudice to you, moving to strike it at a later date.

[fol. 45] Mr. Chappell: No evidence was offered or any predicate laid that he was present or that any of this stuff took place in his hearing or that he had any knowledge of it, and it cannot be binding on him.

The Court: The charge is conspiracy, and if the conspiracy is proven, as you know, then certain evidence may be admitted.

Mr. Chappell: If he is going to prove conspiracy he should prove conspiracy.

The Court: If he doesn't you move to strike it.

By Mr. Cline:

Q. Government's Exhibit 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62 and 63 for identification, and I ask you if you can identify or recognize these exhibits.

A. Again, some of them have my handwriting on them.

Q. Do you see any that you definitely do not feel to be in your handwriting?

A. Yes, sir.

Q. Will you please pull those out?

A. There is four.

Q. The four that you say do not appear to contain any writing of yours are Government's Exhibits for identification 45, 54, 62 and 63. Is that correct?

A. I didn't take the numbers, but I take your word for it.

[fol. 46] Q. Agreed?

A. Yes.

Q. Now, all of the others being exhibits 35 through 61 for identification do contain some handwriting of yours. Is that correct?

A. Yes, sir.

Q. What is written, or what did you write on these slips?

A. I wrote the words, "To be filled," and also some of the dates on them.

Q. Which dates? There are two dates, I believe.

A. The date 8-6-55 and some the dates following the words, "To be filled" are also mine. Not all of mine, but some of them.

Q. Who, if anyone, instructed you to write the words "To be filled" on these slips?

A. To the best of my knowledge, I believe Dr. Needelman said to.

Q. What are all these slips you have been talking about? Do you know what they are?

A. Prescriptions.

Q. Who signed these prescriptions, if anyone?

A. Dr. Needelman.

* * * * * * *

[fol. 72] Redirect examination.

By Mr. Cline:

. . . . . .

[fol. 75] Q. Now, Mr. Roberts asked you awhile ago concerning the custom that was followed, when the patient came in the office and that you took those cards, or a part of them, at any rate, into the Doctor before the patient went into the Doctor's inner office. Is that correct?

A. Yes.

[fol. 76] Q. And when they finished the visit they brought those out. Now, as regards Gerald Miller, Fidele Garcia, Harvey Sachs, Alice Buononito and Renee Pollack, was that procedure followed between August 6th and September 23rd, 1955?

A. No, it wasn't.

Q. Now, I wonder in this cash book here, being Defendant's Exhibit 1 for identification, if you could tell me what these "F's" and "R's" in color opposite and to the left of the patient's name means? Do you know what that is and what it represents?

A. I never saw the "R's" and "F's" before today.

Mr. Roberts: They have been put on to help the witness locate certain names, so we wouldn't spend an hour going through. We tried to facilitate the matter. The "R" is what we believe is in the witness' handwriting and the "F" is what we believe is in Miss Fredericks' handwriting.

The Court: You stated a minute ago that the usual procedure was not followed in the case of those exhibits that counsel asked you about. What procedure wasn't followed?

The Witness: If they asked particularly to see the Doctor due to something either related or unrelated to the receiving of their prescriptions, they were naturally sent in [fol. 77] to see the Doctor and the treatment card would be pulled, but if they were coming in for the purpose of their prescription, the whole procedure was done away with. Their card would not be pulled and put on the Doctor's desk and ushered in.

The Court: In other words, they would just see you, if you were on duty?

The Witness: That is right.
Mr. Cline: That's all.

By Mr. Roberts:

Q. Do you know of any occasion—

Mr. Cline: Just a moment. I know of no recross examination.
The Court: I asked a question and he can cross on that.

Recross examination.

By Mr. Roberts:

Q. Do you know of any occasion when Dr. Needelman was there that they have got a prescription without seeing the Doctor?
A. There was no way for them to get a prescription without seeing the Doctor. The Doctor had to write it.

Mr. Roberts: Fine. That's all.

By Mr. Cline:

Q. You say there was no way to get a prescription un- [fol. 78] less they saw the Doctor? That is before he went to Europe, that was in effect when he was in Europe, was it?
A. No; before he went to Europe, naturally, there weren't any prescriptions at the desk.

By Mr. Roberts:

Q. Before he went to Europe he never left any prescriptions out in front for anybody?

The Court: She just said that.
Mr. Roberts: I did not hear it.
Mr. Cline: Thank you.

[fol. 80] LILLIAN FREDERICKS was called as a witness on behalf of the Government, having first been duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Cline:

Q. Will you state your name, please?
A. Lillian Fredericks.
Q. Where do you live?
A. 1910 71st Street.
Q. Miami Beach?
A. Normandy Isle.

The Court: I think it can be agreed that Miss Fredericks worked in this Doctor's office at the same time that we are concerned about and she is the Miss Fredericks mentioned by the last witness.

Mr. Roberts: Yes, sir.

[fol. 81] The Court: You so agree. Is that correct?

Mr. Cline: Yes, sir.

Mr. Chappell: Yes, sir.

By Mr. Cline:

Q. You know Dr. Needelman, of course, and recognize him. Is that correct?
A. Yes.
Q. Now, who else worked in the office with you at the time you were employed there in August and September, 1955?
A. Sally Rossman.
Q. Were there any other employees in Dr. Needelman's office except you and Miss Rossman, and, of course, Dr. Needelman?
A. You mean the doctors?
Q. Anyone else at all in my capacity.
A. Doctors Grier and Szekely.
Q. Were they both there at the same time?
A. I believe the first two weeks they were both there at the same time.

Q. When you refer to the first two weeks, you refer to what period?

A. The time of Dr. Needelman's vacation.

Q. The first two weeks Dr. Needelman was in Europe there were both Doctor Grier and Doctor Szekely?

A. Yes.

[fol. 82] Q. And after that who was there?

A. After that just Dr. Szekely.

Q. Just Dr. Szekely. Before Dr. Needelman left on his vacation did you have any conversation with him concerning so-called prescriptions?

A. Yes, sir.

Q. Do you recall approximately when that was, as near a date as you can get?

A. I cannot recall.

Q. In relation to the time that the Doctor went away, approximately how long, as close as you can recall?

A. I am afraid I cannot recall that.

Q. Would it be a month or a week or would it be a matter of possibly days?

A. Probably a few days prior to it.

Q. Who was present during that conversation as best you can recall?

A. Miss Rossman and I were present.

Q. With Dr. Needelman?

A. I believe so.

Q. Was anyone else present that you recall?

A. I cannot recall.

Q. Now, as best you recall, once again, what was the nature of the conversation? What did Dr. Needelman have to say and what did you have to say and what did Miss [fol. 83] Rossman have to say, as best you can remember?

A. He gave us instructions.

Q. What was the nature of those instructions?

A. Well, how to handle the cash and how to handle the various prescriptions.

Q. Now, do you know Abe Bruches?

A. Yes.

Q. Do you know Lottie Bruches?

A. Yes.

Q. Do you know Gerald Miller?

A. Yes.

Q. Fidele Garcia?

A. Yes.

Q. And Harvey Sachs?

A. Yes.

Q. And Alice Buononito?

A. Yes.

Q. How about Renee Pollack?

A. Yes.

Q. Do you recall those persons being in Dr. Needelman's office during the period of your employment?

A. Yes.

Q. Do you recall them going to the office when Dr. Needelman was on his vacation?

A. Yes, sir.

[fol. 84] Q. Do you know from your own personal knowledge the nature of the ailment that they were calling on the Doctor about?

A. No, sir.

Q. Now, at this time I show you Government's Exhibits 35 through 63, inclusive, and ask you if you can identify them in any manner.

A. Yes.

Q. When did you first see them, if you recall?

A. Pardon?

Q. When did you first see these slips of paper, if you recall?

A. When they were left with us.

Q. By whom?

A. Dr. Needelman.

Q. What conversation, if any, took place at that time you say he left those with you? Did he leave any instructions of any kind?

A. Yes. We were to keep them in the drawer of the desk.

Q. What were you to do with them?

A. To give them to the patients.

Q. What portion of those slips was filled out at the time they were given to you by Dr. Needelman?

A. Well, I believe everything was filled out except the date and "To be filled."

Q. Now, these words, "To be filled" and the dates, who [fol. 85] completed those, if you know?

A. Well, I believe Miss Rossman. I know I didn't put any "To be filled."

Q. What, if any, writing on these slips that you have in your hand now is your own, if you know.

A. Some of the dates.

Q. Will you check and see if all or a portion of the slips that you have in your hand, have the dates that were inserted by yourself?

A. I cannot seem to recall—

Q. When did you fill them in, if you recall?

The Court: What circumstances arose that caused you to fill them in?

The Witness: I had the patient that would come in.

By Mr. Cline:

Q. In other words, that second figure would indicate the date that this slip of paper was handed to a person that came in the office; is that right?

A. Yes.

Q. As best you can recall, to the best of your recollection, what took place when one of those pictures—take Exhibits 35 for identification, if you will, and the name, Fidela Garcia which appears on there—what took place in the office when that was issued? What did Garcia do if he came in?

[fol. 86] A. Why, he would come in and ask for a prescription.

Q. Who did he talk to when he came in the office?

A. You mean what, all the time, or when the Doctor was present?

Q. As a general rule, during the period August 6th through September 23?

A. I guess he spoke to me.

Q. Now, would he have talked to Dr. Szekely?

A. Not on all occasions.

Q. On most occasions would he have talked to either Dr. Grier or Dr. Szekely?

A. No.

Q. What did you receive, if anything, from Mr. Garcia or the other persons whose name appear on these slips in exchange for these slips of paper?

A. Well, I believe there were various fees.

Q. Do you recall the amounts?

A. Some were five dollars and some were ten dollars, I believe, as far as I can recall.

Q. Who set these fees?

A. Dr. Needelman.

Q. Your conversation with Dr. Needelman, he indicated the fee that was to be charged to each of the patients; is that correct?

A. Those were the regular fees that we were acquainted with.

[fol. 87] The Court: You said some were five dollars and some were ten dollars, as I recall.

By Mr. Cline:

Q. How did you distinguish between who was a five dollar patient and who was a ten dollar patient?

A. By their previous records, I believe.

Mr. Cline: Your witness.

* * * * * * *

[fol. 115] Bernice Sachs was called as a witness on behalf of the Government, having first been duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Cline:

Q. State your name, please.

A. Bernice Sachs.

Q. Where do you live, please?

A. 8420 Byron Avenue.

Q. Where are you employed?

A. The Medical Arts Pharmacy.

Q. How long have you been employed by the Medical [fol. 116] Arts Pharmacy?

A. Close to four years.

Q. You were so employed during the months of August and September of 1955. Is that correct?

A. Yes, sir.

Q. Do you know Walter Waxman, the defendant in this case?

A. Yes, sir.

Q. Would you point him out, please?

A. The second man to my left (indicating the defendant, Walter Waxman).

Q. Was he the owner and operator of the Medical Arts Pharmacy when you were first employed there?

A. Yes, sir.

Q. Is he still your employer at this time?

A. Yes, sir.

Q. And has he been your employer continuously between those periods?

A. Yes, sir.

Q. Do you have any financial interest, that is in ownership, in Medical Arts Pharmacy?

A. No, sir.

Q. Do you work on a commission or do you work on a straight salary?

A. Straight salary.

Q. And have you worked on a straight salary and had no [fol. 117] ownership in the business continuously during the four year period you have been employed there?

A. Yes, sir.

Mr. Cline: At this time I am going to offer Government's Exhibits 64 through 138 for identification.

Mr. Chappell: When were they put in?

Mr. Cline: They are for identification. These are new ones. 64 through 138 for identification.

(Thereupon said documents were marked Government's Exhibits 64 through 138 for identification.)

Q. I ask you if you have ever seen any of these before.

A. Yes, sir.

Q. How do you recognize these—what do you recognize these as?

A. Prescriptions.

Mr. Chappell: I object to "what do you recognize these as". The writing is the best evidence. It is apparent they are in writing.

The Court: She can identify if she has seen the papers before, and if so, where?

[fol. 118] By Mr. Cline:

Q. Where have you seen these papers before?

A. In the drugstore.

Q. What do they purport to be, to the best of your knowledge?

A. Narcotic prescriptions.

Q. Will you please distinguish which ones of these you personally filled? Put the ones you personally filled in a stack, if you will. As you go through tell us, if you will, if there are other groups that you can segregate.

A. In what respect?

Q. Exhibit 131. You have got that in a separate file. What would that be?

A. It was filled by Bill Morris.

Q. What about 138, 137 and 132? You have those separated?

A. Filled by Mr. Waxman.

The Court: That is Mr. Waxman, the defendant, who is in the courtroom here?

The Witness: Yes, sir.

By Mr. Cline:

Q. 130, 129, 128, 127, 121, 122, 123, 124, 125, 126, 120, 119, 118, 117, 116, 115, 114, 113, 112, 111, 110, 109, 109, 104, 105, 106, 107, 95, 96, 97, 98, 99, 100, 101, 102, 103 and 90, 91, 92, 93, 94, 84, 85, 86, 87, 88, 89, 82, 83, 81, 80, and 79. This group represents what?

A. Mr. Kamisarow.

[fol. 119] Q. Who is Mr. Kamisarow?

A. He is another pharmacist. He was working there at the time.

Q. 133, 78, 75, 74, 76, 77, 72, 73, 71, 70, 69, 68, 67, 66, 65 and 64. I wonder if you will take these and tell what group these belong to?

A. These are mine.

Q. These were filled by you?

A. Yes.

Q. As an employee of Mr. Waxman at the Medical Arts Pharmacy. Is that correct?

A. Yes.

Q. How about 134, 135 and 136?

A. It is Mr. Kamisarow again.

Q. Those are also by Mr. Kamisarow?

A. Yes, sir.

Q. I wish you would examine all of these exhibits and tell me what they have in common.

Mr. Chappell: I object to that because the writing is the best evidence.

The Court: They speak for themselves. Objection sustained.

The Witness: They are all narcotics.

[fol. 120] Mr. Chappell: Just a minute.

Mr. Cline: That's all right.

The Court: She has testified to that before.

By Mr. Cline:

Q. Did you ever have any conversation with Mr. Waxman regarding that particular group of so-called prescriptions?

A. Not that I remember.

Q. Do you know Abe Bruches?

A. Yes.

Q. Do you know Lottie Bruches?

A. Yes, sir.

Q. Did you see them often?

A. Yes, sir.

Q. Did you see them often during August and September, 1955?

A. Yes, sir.

Q. During that period August 6th through September 23, 1955 what, if anything, did you do regarding so-called prescriptions brought in by Mr. and Mrs. Bruches, or requested by them?

A. I filled them.

Q. Where did you get the prescriptions from?

A. From the safe.

[fol. 121] Q. From the safe? What safe?

A. We have a safe in our drugstore.

Q. What did you receive, if anything, from Mr. and Mrs. Bruches in exchange for these so-called prescriptions?

A. Two dollars.

Q. What did you do with them?

A. Rung them up in the register.

Q. What was it for?

A. For the pills I gave them.

Q. I ask you what you received in exchange for the prescription. I am not talking about the bottle of pills that you gave. I am talking about a piece of paper.

A. I don't understand.

The Court: Did you get any other conversation except that for the pills, the regular cost of the pills?

By Mr. Cline:

Q. From Mr. and Mrs. Bruches.

A. No, that's it.

Q. When the Bruches came into your place of business did they have these in their hands?

A. No, sir.

Q. Was that the usual way of filling prescriptions, coming and getting it out of the safe?

A. The usual way, no, sir.

Q. How did you happen to know that these were in the safe? How did they get in there, if you know?

[fol. 122] A. I was told.

Q. By whom?

A. I don't remember exactly who told me.

Q. Did you have any conversation with Mr. Waxman regarding these prescriptions that were in the safe?

A. Probably. I don't remember.

Q. Did you have any conversation with Mr. Kamisarow regarding it?

A. Probably.

Q. Did you receive any money for Dr. Needelman from the Bruches on these so-called prescriptions?

A. Sometimes, yes, sir.

Q. What did you do with it?
A. I put it away.
Q. Where, do you recall?
A. In a separate envelope.
Q. Where was the envelope kept?
A. In the safe.
Q. Was there anything besides money in that envelope?
A. No; money.
Q. Pardon?
A. Just the money.
Q. Where was that envelope kept in relation to the other unused so-called prescriptions?
A. They were both in the safe.
[fol. 123] Q. But in separate envelopes, is that right?
A. Yes, sir.
Q. What was specifically done with that money, if you know?
A. That I know?
Q. That's right.
A. The money was given to Dr. Needelman.
Q. Did you see that take place?
A. No, sir.

Mr. Roberts: I move to strike the answer of the witness and ask the Jury be instructed to disregard it.

Mr. Cline: I think Mr. Roberts is correct, in view of her answer.

The Court: Did you ever have any conversation with Dr. Needelman about money?

The Witness: No, sir.

The Court: He didn't say anything to you or in your presence?

The Witness: No, sir.

The Court: The motion will be granted.

[fol. 124] Mr. Roberts: I think the jury should be instructed to disregard it.

The Court: The jury is instructed to disregard it. I think you said something in your opening statement.

Mr. Roberts: Yes, but not an inference that the Government is trying to get across to the jury.

The Court: There is no inference except the inference the jury is going to make. Our discussions, gentlemen of the jury, if I say anything about the evidence or rulings, it has no inference. It is merely an admonition at the moment as to something that is at present before me.

By Mr. Cline:

Q. At this time I show you Government's Exhibits 1 through 63 and ask you if you can identify any of these.
A. Yes, I can identify them.
Q. What do they appear to be, if you know?
A. Narcotic prescriptions.

Mr. Chappell: I object to that.
The Court: What do they appear to be, if she knows. Do you know what they are?
[fol. 125] The Witness: Yes, sir.
The Court: What are they?
The Witness: Narcotic prescriptions.

By Mr. Cline:

Q. Can you tell where they were filled?
A. My drugstore.
Q. By whom?
A. By me, by Mr. Kamisarow and by Mr. Waxman. I guess that's it.

Mr. Cline: Your witness.

* * * * * * *

[fol. 141] Thereupon, the testimony of DAVID KAMISAROW was read as follows, the questions being read by Mr. Cline [fol. 142] and the answers being read by Mr. Rudd.

Direct examination.

"By Mr. Rosen:

"Q. State your name, please.
"A. David Kamisarow.
"Q. Where do you live, Mr. Kamisarow?
"A. 7727 Dickens Avenue, Miami Beach.
"Q. What is your business or profession?
"A. Registered pharmacist.

"Q. Where are you located?

"A. I am now located on Lincoln Road.

"Q. Your own store?

"A. Yes, sir.

"Q. During August and September of 1955, where were you employed?

"A. Medical Arts Pharmacy.

"Q. Who was your employer?

"A. Walter Waxman.

"Q. Do you recognize him here?

"A. Yes, sir.

"Q. Point him out, please.

"A. Sitting at the end of the table.

"Mr. Rosen: Let the record reflect the identification of the defendant Waxman.

"Q. Now, then, Mr. Kamisarow, I hand you a group of documents marked for identification, each one bearing a separate identification number, and I ask you to go through [fol. 143] them and pick out, and as you pick it out read out the number shown on the identification, any one of those that bear your signature or that bear any of your handwriting or notations that you can.

"A. Do you want me to call this number that is on the small paper?

"Q. Yes, sir.

"A. 39, 41, 44, 45, 46, 55, 56, 57, 59, 2, 3, 4, 5, 9, 10, 12, 36, 15, 18, 20, 22, 21, 23, 26, 27, 30, 32 and 34.

"Mr. Rosen: Will the Clerk please mark these Government's Exhibits 79 through 130."

Mr. Chappell: I will have to raise an objection to that.

Mr. Cline: I am not offering them now.

("The prescription forms were thereupon marked, respectively, Government's Exhibits 79 through 130 for identification.)

"By Mr. Rosen:

"Q. The ones that you have identified, are those ones that you have filled yourself?

"A. Yes, sir, bearing my initials.

"Q. There are some in here that do not bear your initials?

"A. No; I tried to separate them.

"Q. Then, all of these you have called off bear your initials as having been filled by you?

[fol. 144] "A. Yes.

"Q. Using any one of them as an example, will you describe to the Court and the jury, please, what you mean by filling.

"A. Filling, when we receive a prescription we look at it to see what the items or ingredients are; we go to the—in this particular case it would pertain to a safe, the only place where these items are kept, because of certain restrictions, take the bottle to our counter, count out the required number of pills or weigh the ingredients, where it is prescribed; in this case it would be counting the pills, using the directions that the physician has put on to put on the label, and this label is put on a glass or a plastic container, wherein the pills are, and that is given to the patient.

"Q. What do you receive in exchange for the medication?

"A. A price for the prescription that we give the patient.

"Q. You receive nothing else but the money?

"A. I don't understand what you mean.

"Q. Well, in the case of the Bruches—did you handle any of these documents for the Bruches?

"A. Yes.

"Q. What did you receive from the Bruches in exchange for the medication?

"A. We received the fee for the prescription itself, for the ingredient called for or the tablets called for, and at [fol. 145] different times moneys were left, which we put aside, which was—which we understood was for the old bill they owed the Doctor, and it was a chance to pay off that way. Shall I say it that way? There was no definite amount on it.

"Q. What did you do with the money you received for the Doctor?

"A. That money, you mean?

"Q. Yes.

"A. That was put in an envelope and put aside.

"Q. When the other parties came in with these documents whose names appear on these documents, other than the piece of paper and money, did you receive anything else from these people?

"A. No, sir.

"Q. You followed the same procedure with each one of those?

"A. Yes, sir.

"Mr. Rosen: At this time I should like to offer into evidence the documents bearing the identification numbers that Mr. Kamisarow identified into evidence with those numbers, bearing corresponding exhibit numbers.

"Mr. Kehoe: No objection on behalf of the defendant Waxman.

"The Court: Mark them in evidence.

[fol. 146] (The prescription forms were thereupon received in evidence and marked, respectively, Nos. 39, 41, 44, 45, 46, 55, 56, 57, 59, 2, 3, 4, 5, 9, 10, 12, 36, 15, 18, 20, 21, 22, 23, 26, 27, 30, 32 and 34.)

"By Mr. Rosen:

"Q. Now, Mr. Kamisarow, I hand you Government's Exhibits 79 through 130. They have not yet been marked by the Clerk, but they will be bearing that number for identification. I ask you, sir, to examine those and tell me if your initials appear as having filled those documents.

"A. That I am not sure of as being my signature (indicating) that is not my writing.

"Mr. Rosen: Will the Clerk please mark the one the witness says he is not certain of as Government's Exhibit No. 79.

("The prescription form was thereupon marked Government's Exhibit No. 79 for identification.)

"Mr. Rosen: And the others bearing the following numbers.

("The prescription forms were thereupon marked, respectively, Government's Exhibits Nos. 80 through 130 for identification.)

"By Mr. Rosen:

[fol. 147] "Q. Now, please, Mr. Kamisarow, during the time that you were filling these various documents that you have just identified having your handwriting on them, did you know where Dr. Needelman was?

"A. Did I know where he was. No, I didn't know where he was.

"Q. Did Dr. Needelman tell you where he was going?

"A. In the course of conversation, he left for his vacation.

"Q. So, you knew he was out of town at this time?

"A. Yes.

"Q. Using the documents that you have already identified, will you separate them into separate piles relating to the various drugs that they call for.

"Witness does as requested.

"Q. Do you have them separated?

"A. Yes.

"Q. Will you tell me, please, what handwriting of yours appears on this particular one which I am going to ask the Clerk to mark as Government's Exhibit No. 80 for identification?

("The prescription form was thereupon marked Governments Exhibits No. 80 for identification.)

"By Mr. Rosen:

"Q. What handwriting of yours appears on Government's Exhibit No. 80 for identification?

"A. The dates and my initials.

[fol. 148] "Q. The dates and the—

"A. Initialling.

"Q. All the dates that appear on it?

"A. Yes, sir.

"Q. Where did you receive that, if you can recall?

"A. That I couldn't say.

"Q. Did you fill that document?

"A. According to this initialling, I did.

"Q. On what date?

"A. On the 11th of August.

"Q. 1955?

"A. 1955, yes, sir.

"Q. Where were you at that time?

"A. I would have been in the drugstore to have filled it.

"Q. What did you do? We have already described the procedure that you used in filling each one of these papers. I will ask you the same question as to the other two stakes. Were they received by you in the ordinary course of your business?

"A. Yes, sir.

"Q. And filled as you have previously described?

"A. Yes, sir.

"Mr. Rosen: At this time I am going to offer all of them in evidence as Government's Exhibits 80 through 130.

"Mr. Duval: Let me see them."

[fol. 149] Mr. Chappell: Same objection.

The Court: Overruled.

"By Mr. Rosen:

"Q. Now, then, Mr. Kamisarow, I hand you Government's Exhibits 131 through 136, and ask you to examine those documents and tell me if there is any portion of them containing your handwriting.

"A. There is.

"Q. What portion of the document is in your handwriting?

"A. The dates on the upper parts of the prescriptions.

"Q. I ask you to look at Government's Exhibits 80 through 130 and tell me what portion of those documents are in your handwriting.

"A. That signature I don't recognize. My writing is the dates—these are the dates and the initialling, my initials.

"Q. Directing your attention to Government's Exhibit No. 122, the writing opposite the last date appearing on it, 9/4/55, whose handwriting is that?

"A. That is mine.

"Q. What words are they?

"A. To be filled 9/4/55.

"Q. On the others that I pointed out, I ask you to look at the words, "To be filled," and ask you in whose hand-
[fol. 150] writing those words are.

"A. That is mine.

"Q. All of those I handed you there?

"A. Yes.

"Q. Now, then, go through this batch here and as you pick out any having your handwriting and the words 'To be filled,' and the date, will you call out the number of the exhibits.

"A. 77, 68, 76, 69, 71, 72, 73, 67, 74, 75, 78, 65, and 79.

"Q. Now, then, referring to Government's Exhibits for identification 80 through 130, you have divided them into three different types of narcotics. Taking Government's Exhibit No. 80, which you have heretofore identified as having been dispensed by you, tell us the quantities and qualites of narcotic drugs dispensed by you.

"A. The quantities and—I didn't get that second word.

"Q. Quantity and quality.

"A. The quantity and the name of the item?

"Q. All right.

"A. Methadon tablets, 10 milligrams, number, 24 tablets.

"Q. Twenty-four 10 milligram tablets.

"A. Yes, sir.

"Q. Government's Exhibit 81 for identification.

"A. That was for tablets of Demerol, 100 milligrams, number, 24.

"Q. Twenty-four Demerol tablets?

[fol. 151] "A. Yes, sir.

"Q. Government's Exhibits 82 through 130.

"A. That would be this group here (indicating)?

"Q. Yes, sir.

"A. Those were codeine sulphate tablets, one grain tablets, number, 24.

"Q. Twenty-four one grain Codeine Tablets?

"A. Yes, sir.

"Mr. Rosen: Will the Clerk please mark these Government's Exhibits 137 and 138 for identification?

(The two prescription forms were thereupon marked, respectively, "Government's Exhibits No. 137 and 138 for identification.")

"By Mr. Rosen:

"Q. How long have you been employed by Walter Waxman at the Medical Arts Pharmacy?

"A. The total time?

"Q. Yes, sir.

"A. From about November, 1953, until May of 1956.

"Q. And your position there was a pharmacist?

"A. Yes, sir.

"Q. What procedure was there for a pharmacist filling a particular document or prescription, that is, initialling or cancelling or identifying?

"A. Pertaining to a narcotic prescription or an ordinary [fol. 152] prescription?

"Q. Narcotic prescription.

"A. The procedure followed, as I explained before, in taking the tablets, the pills, or the compounding of the type that is called for, labelling and initialling when completed, and then dispensing to the patient.

"Q. Initialling the paper that you received?

"A. Yes, sir. Cancelling is the word that we use.

"Q. There is an 'X' that goes across it and the initialling by the filling pharmacist?

"A. Yes.

"Q. I ask you to examine this group of documents and tell me if, based upon your association and working there, if you can identify the filling pharmacist, and if you can identify them, will you call out the name of the person and the document number.

"A. On each one?

"Q. Yes, sir, on those I just handed you.

"A. No. 25, Mr. Waxman; No. 28, Mr. Morris; No. 31, Mr. Waxman; No. 43, Mr. Waxman; No. 50, Mr. Morris; No. 53, Mr. Morris; No. 61, Mr. Waxman; No. 7, Mr. Waxman; No. 13, Mr. Waxman; No. 14, Mr. Waxman; No. 17, Mr. Waxman; No. 19, Mr. Waxman; No. 24, Mr. Waxman; No. 137, Mr. Waxman; No. 138, Mr. Waxman.

"Q. Of the ones you identified as filled by Mr. Waxman, [fol. 153] how did you identify that?

"A. Because of his particular type of initialling in making that small, which I found out was a little "w" with that circle around it.

"Mr. Rosen: At this time, I should like to offer into evidence as Government's Exhibits bearing the same number as identification numbers, No. 25, 31, 43, 138, 137, 24, 19, 17, 14, 13, 7 and 61."

Mr. Chappell: I want the same objection, your Honor.

The Court: Yes, overruled.

Mr. Cline: I have not introduced these, so offer them at this time, your Honor. That was merely reading off from the transcript.

Cross examination.

(Thereupon Mr. Cline read the questions on cross-examination and Mr. Chappell reads the answers:)

"By Mr. Kehoe:

"Q. How long have you been a registered pharmacist under the laws of the State of Florida?

"A. Since 1949.

"Q. You went to work at Mr. Waxman's pharmacy at what time?

"A. 1953.

"Q. What has been your experience at any time prior to August of 1955 for prescriptions coming to you through the [fol. 154] regular course of business with the notation, 'To be filled,' and the date inserted thereon?

"A. You mean what were my orders?

"Q. What has your experience been as to receiving prescriptions with that notation on there?

"A. I don't recall any before that.

"Q. I hand you Government's Exhibit No. 80. What handwriting on there is yours?

"A. The dating and the initialling.

"Q. What dating?

"A. '8/6/55' and '8/11/55'.

"Q. Under what circumstances did you put that writing on that prescription?

"A. You mean when it was given to me originally?

"Q. Yes, sir.

"A. At the time the Doctor brought the prescriptions to the store, and being in charge that morning with Mrs. Wax-

man, I asked how—well, I don't recall that I asked, but it was told to me that these were to be filled only on the dates marked, never more than one a day, and then by writing that date in, it would be a prescription.

"Q. You wrote that on there under the direction of Dr. Needelman?

"A. That is right. There would have been no other way for me to know that.

[fol. 155] "Q. I hand you now Government's Exhibit No. 81. On this prescription what handwriting is in your hand?

"A. Again, the dates, 'To be filled,' and my initialling.

"Q. That prescription is to whom?

"A. Renee Pallon.

"Q. I hand you Government's Exhibits 83 to 130, and ask you what writing on those prescriptions are in your hand.

"A. On each, as I call them, or as a group?

"Q. As a group. Is there any of your handwriting on Exhibit 130?

"A. My initialling and the prescription number.

"Q. Look at the others.

"A. The writings, 'To be filled' are mine, and the initialling are mine, except in the case of No. 122, which I think I questioned before as not being my initialling. The writing is mine.

"Q. The '8/6/55' is yours?

"A. Yes, sir.

"Q. And 'To be filled' is yours?

"A. Yes, sir.

"Q. But the initialling here, you can't say whether it is yours or not?

"A. Yes.

"Q. Under what circumstances did you write on these Exhibits 83 to 130 the date '8/6/55' then 'To be filled' and [fol. 156] on various dates?

"A. As I said before, that was the morning when I was in the store with Mrs. Waxman, and these were brought in.

"Q. By whom?

"A. By the Doctor.

"Q. Dr. Needelman?

"A. Dr. Needelman.

"Q. All right.

"A. We—I was told—I should say I was told by writing it that way on the dates that they were to receive them, and not more than one a day, if they wanted it, they were to—by writing 'To be filled' with that date would make it a prescription.

"Q. What conversation took place between you and Dr. Needelman about writing those on those prescriptions?

"A. You mean at that time?

"Q. Yes, sir.

"A. Well, as I recall—I don't recall. He had been writing and being tired, it would be sufficient, even in my writing, to write it in as long as the date was written when they were filled.

"Q. Did you say to Dr. Needelman, 'You write it in,' or words to that effect?

"A. I don't recall.

"Q. As a matter of fact, didn't you say to Dr. Needel- [fol. 157] man, 'You write it in,' and he said, 'I am too tired; my arm is about to fall off,' or 'I am too busy,' or words to that effect?

"A. Words to that effect.

"Q. You then proceeded to write the date in there and 'To be filled'?

"A. That is right.

"Q. What, if anything, did Dr. Needelman tell you would happen if on a prescription that had to be filled in, say, 9/20/55, if they didn't come in on that date for that prescription, then what did he instruct you to do with that particular prescription?

"A. As I recall, they were to be put aside. I believe he picked those up when he came back.

"Q. The Doctor told you not to give it to the patient; is that correct?

"A. Yes, sir.

"Q. Do you know of your own knowledge whether or not Mrs. Bruches came into the store and got a prescription from you and took it to another pharmacist to be filled during this time?

"A. Yes. That happened two or three times in between deliveries of these items, when we didn't have it in the store.

"Q. As a pharmacist, how long had you known Abe Bruches and Lottie Bruches as patients who were having [fol. 158] prescriptions for Codeine filled?

"A. The entire period I was in the store.

"Q. How frequently would they come in with these prescriptions?

"A. On an average of once a day.

"Q. Had they been coming in with these prescriptions for that medication from doctors other than Dr. Needelman?

"A. I don't recall that.

"Q. But you do recall them coming in as patients with that prescription and for that medication?

"A. Yes, sir.

"Q. What conversations, if any, took place between you and Dr. Needelman as to whether the Bruches would or would not pay something on account of a bill that they, the Bruches, owed to the Doctor?

"A. I can't say if it was from the Doctor or in the discussion there at the time.

"Q. Tell us what it was.

"A. That they had owed the Doctor some money, and if they would leave any moneys to put it aside for him.

"Q. Did the Bruches at any time leave with you money for that purpose?

"A. Yes.

"Q. Was there a specific amount that they would leave with you?

[fol. 159] "A. No.

"Q. Did they leave money with you on each occasion they were in?

"A. No.

"Q. Do you recall of any instance when the Bruches were in and did not even pay for the prescriptions?

"A. There were several times like that.

"Q. During that period of time, that is, in August and September of 1955, can you give me a fair estimate of the average number of prescriptions that would come through the drugstore?

"A. Oh, it would be over a hundred.

"Q. Did you knowingly, or are you conscious of having done anything wrong in filling these prescriptions that you have identified?

"A. No, sir.

"Q. Did Walter Waxman ask you to do anything wrong, irregular or unlawful in the filling of that prescription?

"A. No, sir.

"Q. Has he ever at any time asked you to do anything wrong or unlawful as to any prescription?

"A. No, sir.

"Q. Did you enter into any combination, conspiracy, or agreement with Walter Waxman to furnish any person narcotic drugs contrary to the provisions of the law?

[fol. 160] "A. No, sir.

"Q. Did you have any such agreement with Bernice Sachs to furnish narcotic drugs unlawfully to any person?

"A. No, sir.

"Q. Did you have any such agreement with Sally Rossman?

"A. No, sir.

"Q. Did you have any such agreement with Lillian Fredericks?

"A. No, sir.

"Q. Did you have any such agreement with Harry Needelman?

"A. No, sir.

"Q. Did you have any conversation with any persons about these prescriptions other than the conversation that you have testified to with Dr. Needelman about the prescriptions for the Bruches?

"A. Well, in the normal course of running the store the subject would have come up with Mr. Waxman within the day or two that it happened.

"Q. What would come up? What do you remember specifically?

"A. Well, about him taking the prescription out, only to take the one that is dated for that day, if it is not used to put it aside, and they left any other money just to put it in the package there.

"Q. I am talking about any patient or customer of the store other than the Bruches.

"A. Oh, no; no, sir.

[fol. 161] "Q. What was said by Dr. Needelman in reference to if the Bruches would not leave any money to apply on their bill, what, if anything, did he say about whether the prescription should or should not be filled and delivered?

"A. There was no question on that at all. If they left anything we were to accept it, but it had nothing to do with his holding the prescription back from them.

"Q. You would honor the prescription?

"A. Yes, sir.

"Q. If they did leave any money to take it and hold it aside for him?

"A. Yes, sir."

"Redirect examination.

"By Mr. Rosen:

"Q. To the best of your recollection, have you ever written in the words, 'To be filled' and dated prescriptions or pieces of paper at any other time?

"A. You mean during the same period?

"Q. At any time.

"A. Yes, there was.

"Q. You wrote in the words 'To be filled'?

"A. Yes, sir.

"Q. For whom?

"A. I wouldn't recall now.

"Q. You dated prescriptions for physicians?

"A. Under their direction.

[fol. 162] "Q. Name one.

"A. Just Dr. Needelman.

"Q. No other doctor?

"A. You asked me just for him.

"Q. For any other doctor did you do that?

"A. Not to my best recollection now, no.

"Q. I am not sure that I understand exactly what procedure you followed when Dr. Needelman left this pad of Codeine papers. Do I understand that you sat down and filled in each one by dating all the way through this entire pad?

"A. I don't know if I finished the pad, but it would show if I had stopped or not.

"Q. I hand you Government's Exhibit No. 80, which you have identified as having been filled by you, and the words, 'To be filled 8/11/55,' and also, 8/6/55'. Will you tell me the name of the patient, the person to whom that paper is made out?

"A. Harvey Sachs.

"Q. What is the narcotic drug called for in that?

"A. Methadon.

"Q. Was that left with you or the store?

"A. No, these were not left with the store.

"Q. The Methadon was not left, but your handwriting appears on it, with the words, 'To be filled' and two dates?

"A. Yes.

[fol. 163] "Q. Now, when did you write that in, Mr. Kamisarow?

"A. I can't answer that one now. I mean, I wouldn't know how to answer that when you say 'now'.

"Q. Will you look at the document and see if you can tell me when you put in those dates.

"A. That would have been written on 8/11/55.

"Q. So, you put in the date '8/6/55' and the words, 'To be filled'?

"A. Right.

"Q. And then '8/11/55'?

"A. That is right.

"Q. I hand you Government's Exhibit No. 81 and ask you the name of the person to whom that is made.

"A. Renee Pollack.

"Q. What is the narcotic drug called for in that?

"A. Demerol.

"Q. Was that left at the store?

"A. I don't think this was.

"Q. You have already identified the words 'To be filled' and the dates.

"A. Yes, sir.

"Q. Will you tell me, please, when you wrote those dates in and those words.

"A. From what it shows here it would have been on the 6th, 8/6/55, to cover 8/11.

[fol. 164] "Q. Are there any others that you know of that were not left at the store that you filled in the dates and the words, 'To be filled'?

"A. No; I wouldn't remember that."

Mr. Rosen: That is all.

* * * * * * *

[fol. 187] K. C. Rudd was called as a witness on behalf of the Government, having first been duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Cline:

Q. Will you state your name, please, sir?

A. K. C. Rudd.

Q. Where do you live?

A. Miami, Florida.

Q. By whom are you employed?

A. The United States Treasury Department, Bureau of Narcotics.

Q. Your occupation, Mr. Rudd?

A. Narcotic Agent.

Q. How long have you been a Federal Narcotic Agent?

A. Since 1935.

Q. That would be about twenty-two years. Is that correct?

A. Yes, sir.

[fol. 188] Q. How long have you been a Federal narcotic officer in the Miami area?

A. This past eight years.

Q. Do you know Dr. Needelman and Walter Waxman, the defendants in this case?

A. I do.

Q. Did you have occasion to contact them in connection with your official duties as federal narcotics officer during the months of July, August and September, 1955?

A. During September.

Q. What was the occasion for that, Mr. Rudd?

A. The occasion was that I was making an investigation and inspection of the narcotic activities of pharmacies—of Mr. Waxman's drugstore at Miami Beach, and the narcotic practices of Dr. Needelman in connection with his having a federal narcotic tax stamp as did Mr. Waxman. That was the purpose of my contacting them.

Q. Do you recall the approximate date, sir?

A. Yes. I talked to them in connection with this case the first time on September 22, 1955.

Q. Who was present, Mr. Rudd, as best you can recall?

A. As to which defendant?

Q. Let's start with Mr. Waxman. Who was present. The approximate date that you first talked to Mr. Waxman regarding this matter.

[fol. 189] A. On the 22nd there was present myself, Federal Narcotic Agent Waters, Florida State Narcotic Agent Bellinger and also Mr. Kamisarow, who has been mentioned here before.

Q. Where did this conversation take place?

A. That conversation was after I had talked to Dr. Needelman the same date but much later on that date.

Q. You talked to Dr. Needelman first?

A. Yes. Actually, I talked to Mr. Kamisarow first, in connection with this case on that date.

Q. As far as Dr. Needelman and Mr. Waxman is concerned, you spoke to Dr. Needelman before you spoke to Mr. Waxman?

A. Yes, on that date, the 22nd.

Q. On the same date?

A. Yes.

Q. Who was present when you talked to Dr. Needelman?

A. Federal Agent Waters and Florida State Narcotic Agent Bellinger.

Q. Where did that conversation take place?

A. In Dr. Needelman's office.

Q. Will you relate as best you can the gist of the conversation, what was said by Dr. Needelman, yourself and anyone else present.

A. Well, as I entered the office Dr. Needelman was out in the reception part of his suite of offices over on Miami Beach. At that time a person whom I found out later to be

[fol. 190] Dr. Szekely was there with him talking in the reception room, but Dr. Szekely was not present during any of the conversation there in regard to this case. The only one present at that time during that initial conversation was Dr. Needelman. On the 22nd was myself, Federal Agent, Waters and State Narcotic Agent Bellinger. In connection with my duties and my job I had had occasion previous to that time to talk to Dr. Needelman.

Q. Do you recall when that was?

A. Yes, in 1952.

Q. What was the nature of that conversation?

A. Well, the nature—

Mr. Roberts: I object to any conversations had back in the year 1952. It is not connected with this case. It is too remote.

The Court: Sustained.

The Witness: I had talked personally with Dr. Needelman for some time previous to the date of September 22nd, 1955, as I have stated, and it was in 1952. So when I went to his office accompanied by the other officers I introduced myself in the event he did not remember me. However, he did remember me. Nevertheless, being I was on official business to his office I did exhibit my credentials to him and introduced the other officers with me by their names and [fol. 191] ranks at that time, and I told Dr. Needelman that I was there in connection with his holding at that time a Federal narcotic tax stamp. In other words, he then was a registered physician as he still is now, I imagine. Every person, a druggist, hospital or doctor who deals in any way in narcotics—whether handling of them or prescribing or storing or so forth, they must be registered by the Federal Government and the Treasury Department, my department. And it is part of my duties to make inspections and whatever inquiry I find it necessary of anyone in my territory of South Florida having such a tax stamp from the Government so I explained to the Doctor that the purpose of my visit there was to make certain inquiries and inspection of his narcotic activities of recent dates. At that time I asked him if he had any objection to being thus inspected and questioned, and interviewed by myself in connection with his official tax stamp that he then held, and he said, "No" I told him that I was going to ask him some questions about

some prescriptions that he had written recently and asked him if there was any reason that he knew of that he did not want to answer my questions about those prescriptions or the people, and he said, "No". He was willing to answer. I then exhibited and laid out in front of him on his desk several prescriptions that I had on that date just shortly previous to the time I visited his office,—that I had removed and taken from the narcotic prescriptions files of the [fol. 192] Waxman drugstore, which is half a block away. I told him that it was in regard to the people named in those purported prescriptions that I wanted to talk to him about. At that point Dr. Needelman himself, without any further questions or prompting of mine started to tell me all about the people named in those prescriptions. He immediately started to tell me that, "Oh, yes, you mean those addicts." He said, "Those people who are old opium and heroin and morphine users." I said, "Yes." Frankly, I was a little amazed that the doctor would tell me that, describe those people as "addicts" as he did. Then I asked him if he had written these prescriptions. He said, "Yes". That before leaving for Europe on his vacation on or about August 6th that he had written out and had these prescriptions prepared and left with his office girl there in his office with instructions that when these people came in for treatment that they, the office girls, should give whoever came in one of these pieces of paper and collect the proper fee that he had been charging previously and keep it for him. The people that we were talking about and whose names are shown and were shown on the pieces of paper which I prefer to call purported prescriptions, are and were Fidele Garcia, Harvey Sachs, Alice Buononito, Renee Pollack, Gerald Miller, Abe Bruches and Lottie Bruches. The prescriptions in question, of which I am talking about here—

By Mr. Cline:

Q. Just a minute, Mr. Rudd. I have handed you a group [fol. 193] of purported prescriptions previously identified as Government's Exhibits 1 through 138 for identification and I ask you if you recognize and can identify these exhibits, each and every one of them.

A. Yes.

Q. When did you first see them and how did they come into your possession, if they did?

A. We have to take them one at a time. Do you want to know where I first saw them?

Q. I want to know if you can identify each and every one of them.

A. These prescriptions I found on the narcotic prescription file of the defendant Waxman's drugstore, the Medical Arts Pharmacy at Miami Beach.

Q. Did you pick them up from the Medical Arts Pharmacy?

A. I did.

Q. And have they been in your custody and control since that time up to the time this case was originally tried up until—

A. Up until the case was originally tried and they passed into the hands of the Court.

Mr. Chappell: If your Honor please, at this time I am going to request that the jury be excused, because I want to question this man right at this particular point.

[fol. 194] The Court: All right, the jury will be excused.

(Thereupon the jury retired from the courtroom at which time the following proceedings were had.)

By Mr. Chappell:

Q. Mr. Rudd, you said that you picked up these prescriptions at Mr. Waxman's drugstore?

A. Yes, sir.

Q. Do you know who owned that drugstore?

A. At this time, no, I do not.

Q. At that time.

A. At that time, Mr. Waxman.

Q. It was not a corporation?

A. I cannot recall whether it was or not, sir.

Q. Now, is September 22nd the correct date that you claim you picked up these prescriptions in his drugstore?

A. Yes, sir.

Q. Who was present when you went to the drugstore?

A. In the prescription part?

Q. Yes.

A. Mr. Kamisarow and Mrs. Waxman, I believe.

Q. Mrs. Waxman?

A. I think she was there present at that moment.

Q. Did you have a search warrant?

A. I did not.

[fol. 195] Q. Did you have any legal paper at all?

A. Other than my credentials, no, sir.

Q. As a government agent?

A. Yes, sir.

Q. Do you know where Mr. Waxman was when you went in there?

A. When I was in there?

Q. Yes.

A. I was told that he was at school.

Q. At his home?

A. At school. I was given to understand he was taking a course at the university in the daytime, or something.

Q. Mr. Kamisarow was a licensed pharmacist in charge at that time?

A. I do not know whether he was licensed under the laws of the State of Florida or not. That is none of my business or concern.

Q. He is the man you talked to?

A. He was in charge. I contacted him.

Q. And he was the one that got out the narcotic prescription file for you to look at?

A. Yes, sir. I told him I wanted an examination of the narcotic prescription file, the cancelled prescriptions the ones that had been filled.

Q. And after you had examined them is it true that you took out of the file these prescriptions that you have there in front of you?

[fol. 196] A. Yes, sir.

Q. You gave Mr. Kamisarow a receipt for them?

A. I gave the store a receipt, let's say. Mr. Kamisarow—I handed him the receipt and left it in the file.

Q. You carried the prescriptions with you out of the store?

A. I did.

Q. And you have had them ever since?

A. No, I have not had them ever since. I have had them except the time they have been in the custody of the Clerk of the Court.

Q. When they had the previous trial?

A. Yes, sir.

Q. Had Mr. Waxman come into the store before you left with these papers?

A. No. When I went back later that afternoon he was then there.

Q. But you had already taken the prescriptions with you at the time and given them a receipt, had you not?

A. Yes, sir. Pardon me. I cannot recall whether I gave a receipt during the first or second visit into the store that afternoon.

Q. What is that?

A. I said I cannot recall whether I gave the receipt during the first or second visit into the drugstore that afternoon.

[fol. 197] Q. You took the papers when you were there on your first visit, these prescriptions, did you not?

A. I took these prescriptions, yes, sir.

Q. And you mean you came back later on that day?

A. Yes, sir. After talking with Dr. Needelman I went back and talked to Mr. Waxman when he came to the store.

Q. When you talked to Mr. Waxman you had already had the prescriptions and had taken them out of his drugstore, had you not?

A. Yes, sir.

Q. Did he give you any consent to take them out of his drugstore?

A. No, sir. He wasn't there. Besides, I didn't need any consent.

Mr. Chappell: I think that is a question of law and a conclusion of the witness and I move to strike that part of the answer.

The Court: That will be denied. We are now trying something in the way of a suppression. He didn't need any, he says.

Mr. Chappell: That's all.

The Court: Did you talk to Mr. Waxman that afternoon?

The Witness: Yes, sir.

[fol. 198] The Court: Did you tell him you took the prescriptions?

The Witness: Yes, sir. And I told him I was taking them and asked him if he had any objection and he said, "No." I know Mr. Waxman, your Honor, quite well, and had taken prescriptions from his store on other occasions previous to this case. Actually, if I may say so to the Court, these prescriptions are being filled by a pharmacist, and once they are filled they have a number, and from that moment on those prescriptions belong to the Bureau of Narcotics, Treasury Department. The store is merely custodian of them for the Government.

Mr. Chappell: That is not the law as laid down.

The Witness: The law says they are required to be kept—

Mr. Chappell: For two years, for inspection.

The Witness: They are not re-fillable from that moment. From that moment they are not good to anyone.

The Court: What do we have before us?

[fol. 199] Mr. Chappell: I was going to put another witness on. I was going to put Mr. Waxman on.

The Court: All right. Come down.

Thereupon: WALTER WAXMAN was called as a witness in his own behalf, and having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Chappell:

Q. Mr. Waxman, were you present in your store—you own the Medical Arts Pharmacy, do you not?

A. Yes, sir.

Q. Is that incorporated?

A. No, sir.

Q. You own it?

A. Outright, sir.

Q. Were you in your drugstore on September 22nd when Mr. Rudd took the prescriptions out of your narcotic file and carried them out of your door?

A. No, sir.

Q. Did you give him your consent to take those prescriptions out of your drugstore?

A. No, sir.

Q. Did you have any knowledge that he had taken them out?

A. No, sir.

[fol. 200] Q. When did you first gain knowledge that he had taken them out?

A. When Mr. Rudd came back and told us that he picked all the prescriptions up.

Q. You don't know how long after that or when he was there?

A. I was there in the afternoon and Mr. Rudd picked them up in the morning, as I understand.

Q. What do you mean by afternoon?

A. Five or six o'clock in the evening.

Q. In other words, he had the prescriptions before you knew anything about it?

A. Yes, sir.

Q. And you had not given him, nor any other Government agent, or State agent, the right to take those prescriptions out of your store?

A. No, sir.

Q. Were they your property?

A. Yes, sir.

Mr. Chappell: That's all, your Honor.

The Court: You heard Mr. Rudd state that he told you he had taken them out and you said, "That's all right."

[fol. 201] The Witness: That is not true. Mr. Rudd never told me that he took them out.

The Court: He said you said it was all right for him to take the prescriptions out; is that true or not?

The Witness: No, sir.

The Court: That is not true?

The Witness: No, sir.

By Mr. Chappell:

Q. Do you know what time in the morning he took them out of the store?

A. I wasn't there.

Q. You don't know? You know it was around five or six o'clock when you got there that evening?

A. Yes, sir.

Q. And they were gone?

A. Yes, sir.

Q. And you say that when you saw Mr. Rudd that evening you did not tell him it was all right for him to take the prescriptions?

A. I didn't get that.

Q. You did not tell him it was all right for him to take the prescriptions?

[fol. 202] A. No, I did not.

Mr. Chappell: That's all.

(Argument off the record.)

DENIAL OF MOTION TO SUPPRESS

The Court: I will deny your motion to suppress.

(Thereupon Court was adjourned until 1:30 P.M. of the same day, at which time the following proceedings were had, in the presence of the jury.)

Mr. Cline: Your Honor, at this time I am going to offer Exhibits 1 through 138 in evidence.

The Court: I will admit them subject to the objections of Mr. Chappell.

Mr. Chappell: Yes, sir. In order to shorten the thing, I will object to them upon the ground as laid out in my motion to suppress.

The Court: I noted a continuing objection, anyway, when you made your first objection, and also for Mr. Roberts, and I think it is in the record. If not, it is now.

(Thereupon, the jury returned to the Courtroom, and the following proceedings were had.)

[fol. 203] K. C. Rudd resuming the witness stand, testified further as follows:

By Mr. Cline:

Q. Mr. Rudd, at this time I hand you Government's Exhibit 139 for identification and ask you if you can identify those documents?

A. Yes.

Q. Where did you first see them, Mr. Rudd?

A. In Dr. Needelman's office on September 22, 1955 on the occasion of the visit and conversation which I was testifying to before Court was adjourned.

Q. How did these come into your possession, if they did?

A. In the course of conversation these pieces of paper came up in the conversation. Dr. Needelman took them out of his desk drawer and handed them to me.

Q. And they have been in your possession continuously until they came into court here. Is that correct?

A. That's right.

Mr. Roberts: We object to the introduction into evidence on the ground that the prescriptions have never been filled.

The Witness: They are the ones with the date in blank.

[fol. 204] Mr. Cline: That is correct, your Honor. They were given to Mr. Rudd by the doctor.

The Court: I sustain the objection.

Mr. Cline: These are not being introduced as prescriptions. They are being introduced merely on the basis of documentary evidence furnished by Dr. Needelman voluntarily.

The Court: All right. I am holding that it is immaterial. That is the reason I am refusing them.

By Mr. Cline:

Q. Mr. Rudd, I hand you Government's Exhibit 141 for identification and ask you if you can identify that document?

A. I can.

Q. When did you first see it?

A. In Dr. Needelman's office on the afternoon of the 22nd September, 1955.

Q. What conversation, if any, took place at that time regarding this document?

A. This was one of a number of documents that the Doctor handed to me which was the remaining one of this name which he had furnished to the defendant Waxman's drugstore prior to leaving for Europe.

[fol. 205] Q. Did you have any conversation with Dr. Needelman about how this had come back into his possession?

A. Yes, sir.

Q. What was the nature of that conversation?

A. Well, we were talking about the Bruches, that is Abe and Lottie Bruches. Dr. Needelman told me that on that very date of September 22nd before I had arrived at his office, that he had gone to the drugstore after having just arrived back from Europe on that day or just the day before, something like that—he had visited the drugstore upon arriving back from Europe and on the very day had received that document and other back from the drugstore which had not been used by the drugstore during his absence, and that he had—

Q. Was there any conversation about anything else he may or may not have picked up from the drugstore?

A. Yes. With that document and some others he had picked up $175.00 cash from the drugstore.

Q. Was there any conversation between yourself and Dr. Needelman as to what that $175.00 was for or represented?

A. Yes; that that represented fee payment to him, Dr. Needelman, collected from Abe and Lottie Bruches at the rate of $2.50 each for the purported prescriptions left at the drugstore on or about August 6th, and that fee of $175.00 was for the prescriptions used and sold by the drugstore to the Bruches during his absence.

[fol. 206] Q. Mr. Rudd, Government's Exhibits in evidence, 64 through 138, I believe are the ones that were sold to Abe and Lottie Bruches; is that correct?

A. I would have to examine them to tell you.

The Court: They speak for themselves.

By Mr. Cline:

Q. Mr. Rudd, did you make a calculation of the prescriptions that you received from the drugstore that had been filled for Abe and Lottie Bruches?

A. Yes, sir.

Q. What was the result of that calculation?

A. At $2.00 each, it came out even, less $2.50, or over. It was one way or the other. $2.50 over or under of the total amount of purported prescriptions sold to the Bruches. In other words, that $2.50—it came out almost on the nose. There was $2.50 difference.

The Court: What came out on the nose?

The Witness: The amount of the prescriptions—purported prescriptions sold by the drugstore to the Bruches by the drugstore at the rate of $2.50 each for each prescription.

The Court: What does it aggregate?

[fol. 207] The Witness: $2.50. There were sixty-eight prescriptions and I think they would run $172.50.

By Mr. Cline:

Q. Mr. Rudd, I have handed you Government's Exhibits 142 for identification. Will you identify those documents?

A. I have put my initials thereon.

Q. When and where did you first see them?

A. On September 22nd, 1955 at Miami Beach in the office of Dr. Needelman.

Q. Did they come into your possession?

A. They did.

Q. How did they get into your possession?

A. Dr. Needelman gave them to me.

Q. Did you have any conversation with Dr. Needelman about what they were?

A. Yes, sir.

Q. Did Dr. Needelman identify those documents for you, Mr. Rudd?

A. Yes, he identified them and explained what they were.

Q. What did he say they were?

A. He said those were the remainder of the prescriptions that he had written and prepared but not dated, and

left at his office upon departing for Europe on or about August 6th. The remainder of those which he had left with his office girls when he left and gave them instructions how [fol. 208] to dispense them to the persons named on these pieces of paper.

Q. Have you compared the names that appear on these with the names appearing on Government's Exhibits 1 through 64?

A. Yes, sir.

Q. Are they the same or different names?

A. They are the same.

Mr. Cline: At this time I offer in evidence Government's Exhibits 141 and 142 for identification.

Mr. Roberts: To which we object on the same grounds heretofore advanced on which we have been sustained, that it is incompetent, irrelevant and immaterial and has no bearing on the case. None of these prescriptions were ever filled.

The Court: Sustained.

By Mr. Cline:

Q. What further conversation did you have with Dr. Needelman on that same date?

A. In my conversation about these same people, Garcia, Buononjto, Miller, Sachs, Pollack and the Bruches, I asked him if any of these people had ever been cured of their addictment to narcotic drugs and he said they had. I asked him how many had been cured and he said he didn't know. I asked him if any of them had ever been cured at the United States Public Health Hospital at Lexington, Ken- [fol. 209] tucky. He said one or two had, but that he wasn't sure whether one or two had been cured.

I asked him if he had ever discussed with these people about the advisability of them taking the cure, for instance, going to Lexington Hospital for a supervised cure. He said he had talked to them about it, but that they would not go because they were working, or they could not go because they were working, but that he had talked to them about their jobs more than about the cure; and I asked him about that and he said that he thought it was wonderful, because

these people by using Methadon could go out on their job and keep working and not have to go out on the streets to buy heroin, morphine or a derivative. I asked him if he felt that the Methadon that he was furnishing either directly or indirectly to these addicts was shortening their addiction to narcotics, and he said he did. I asked him if he knew that Methadon was a narcotic drug and he said it was. I asked him to what degree. He said it was less habit forming that morphine. I asked him that if in his daily practice other patients besides these addicts coming in to his office complaining of pain did he ever find it necessary to prescribe or give narcotics to any of these other normal people coming to his office, and he said that he did. I asked him how much narcotics he ever gave to any of his normal patients for any pain and he said, "One shot." I asked him if he considered ten milligrams of Methadon, one [fol. 210] tablet, to be one shot and he agreed. He said, "That is one shot". That is when I asked him, "Well, then, why did you find it necessary to give twenty-four tablets, twenty-four shots, to these people on one prescription?" And that's when he said, "Because they told me they needed it." I asked him then if he considered that if any of these addicts, with the possible exception of the Bruches, were withdrawn from narcotics properly they would suffer any pain or, rather, any ill effects other than normal withdrawal symptoms. And he said, no, that he didn't think so. I asked him if it were possible and I asked him, supposing if in his medical opinion that these people with the possible exception of the Bruches, could be cured, and he said, yes, he thought they could be cured.

By Mr. Cline:

Q. Did you ever have any conversation with the Doctor concerning the fees charges to the patients that came to the office and the Bruches?

A. Yes.

Q. What was the nature of that conversation?

A. I asked him what his instructions were to the girls in the office as to the amount of fees to be charged for each one of these pieces of paper and he said, "Ten dollars for some, five dollars for others, or two dollars and fifty

cents for others." In other words, it was ten dollars for Miller, ten dollars for Buononito, for each one. Five dollars [fol. 211] to Harvey Sachs and two-fifty each to the Bruches.

Q. Did you have any conversation as to why he left the prescriptions for the Bruches at the drugstore rather than have the people pick them up at the office, from the office girl?

A. Yes. He told me that the Bruches had been coming to him for some time. He said that Abe Bruches had been coming to him longer than Lottie Bruches, Abe's wife, but Abe was a barber working steadily at the job of barbering at a place there in Miami Beach and that the reason that he left the Bruches' prescriptions with the drugstore on leaving for Europe was because his office many times were closed by the time Abe Bruches got through with his barbering job, and, therefore, he left them with the drugstore so they would be accessible to him, even though his office was closed.

Q. I show you Defendant's Exhibit 1 for identification and ask you if you have ever seen that before?

A. Well, I have no way of knowing if this is the book that Dr. Needelman showed me.

Q. Did you see a book similar to that at Dr. Needelman's office?

A. Yes, sir.

Q. Did you have any discussion with Dr. Needelman about that book and the entries contained therein?

A. Yes, sir.

[fol. 212] Q. What was the extent of that conversation?

A. I wanted to check with the Doctor. I wanted to check the number of the prescriptions that had been cashed in this case, this appeared as against the Doctor's day book or any office record that he wanted to show me; and he did readily show me the day book. I presume this is the same one. I have no way of knowing, and I checked it quite extensively against the number of prescriptions, against the entries in the book, and it was substantially correct. In other words, there appeared to be the proper number of entries in the book with the prescriptions that had been filled. While examining the book I noted that there were

some entries during the period in question with a twenty dollar notation. One I specifically recall is a notation as to Fidele Garcia, and I asked the doctor what about that twenty dollar item, and he explained to me that there were times some of these people—and as he specifically recalled, Fidele Garcia was not able to come to the office the following day after being there, and that he was given a piece of paper, a prescription, without his coming, and that, therefore, twenty dollars was charged because it was two pieces of paper—two prescriptions. And I asked him if he considered that a treatment by him even in his absence, and he said he did. That was all.

Q. Did you have any conversation as to why some of these persons received Methadon, some Demerol and some Codeine?

[fol. 213] A. I didn't get it.

Q. Did you have any conversation with Dr. Needelman concerning the fact that some of these prescriptions were for Demerol, some Methadon, and some for Codeine?

A. Yes. It was rather routine like Codeine for the Bruches, Methadon for the other people, and Demerol for, I believe it was Renee Pollack, because it was a drug that they had been using for some time.

Q. Now, Mr. Rudd, in connection with your official duties as a Federal Narcotics Agent did the names Fidele Garcia, the Bruches, Gerald Miller, and the other ones mentioned on these so-called various prescriptions—are you familiar with those names in connection with your official duties?

A. I am familiar with all except the name Renee Pallon. The others I had been familiar with.

Q. The date of this conversation that you are talking about with Dr. Needelman was the 22nd of September, is that correct, 1955?

A. Yes, sir.

Q. What subsequent conversation did you have with Dr. Needelman and Mr. Waxman or their employees after that date?

A. Well, on that date—you mean after that date?

The Court: After the 22nd.

By Mr. Cline:

Q. Did you have a further conversation on the 22nd?
[fol. 214] A. Yes.
Q. Where?
A. Over in the drugstore.
Q. With whom?
A. With Mr. Waxman and Mr. Kamisarow.
Q. Who was present, if anyone, who else was present, if anyone?
A. Mrs. Waxman was present.
Q. Anyone else? Any other narcotic officer?
A. One of the other physicians, Dr. Szekely, may have been present. I am not sure what times. I cannot recall the date.
Q. What was the purpose of that conversation and what took place?
A. On the first visit to the drugstore, that was about noon of the 22nd. That was when I observed these prescriptions on the narcotic file. That was the first time I had ever seen them. That is when I took them. Then I too took the prescriptions that I have stated here and took them to Dr. Needelman's office and then had this conversation with Dr. Needelman, showing him these prescriptions. It came up during that conversation, as I have stated, that there was some unused prescriptions. After I got through talking with Dr. Needelman I immediately went back to the drugstore to check to see if that were all. Mr. Waxman was [fol. 215] there then. He had not been there earlier in that afternoon. I asked him if there were any more prescriptions for the Bruches or anyone else that had been left there by Dr. Needelman. He looked in his safe and said, "No, there is none here." Then he turned to Mr. Kamisarow who was present and asked him, "Where are the Bruches' prescriptions," and Mr. Kamisarow responded, "All gone. The Doctor picked them up. They are all gone." I then had a further conversation with Mr. Waxman, who I know and who has known me for some time. He knew who I was, and he wanted to ask me, and in fact, did ask me at that time if he was in trouble, and I told him that I didn't know yet, that I was just making an inspection and inquiry.

And he asked me if I was going to arrest him at that time and I told him I didn't know. "I am not through yet." And he asked me when I was going back to the store." I said I would be back to the store tomorrow to make an inventory of his stock which would take, as he would know, and I knew it would take at least half a day. That is about all the conversation that I had with Mr. Waxman at that time. I did have some conversation with Mr. Kamisarow.

Q. Was Mr. Waxman present at the time of that conversation with Mr. Kamisarow?

A. No.

Mr. Chappell: I would object to it.

The Court: Sustained.

[fol. 216] Mr. Cline: Mr. Kamisarow was charged as a co-conspirator.

The Court: He was not arrested as a co-conspirator.

By Mr. Cline:

Q. Skipping the conversation with Mr. Kamisarow, what took place next?

A. Well, nothing more occurred on that day. The next day I went back to Dr. Needelman's office and had some conversation with him and at that time had a conversation with one of his office girls named Sally Rossman. Neither Sally Rossman nor Lillian Fredericks were present at Dr. Needelman's office on the 22nd, so I had a two-fold purpose in going back to the office on the 23rd. I was accompanied at that time by Narcotic Agent Walters. Shall I proceed with the conversation?

By Mr. Cline:

Q. If Mr. Waxman or Dr. Needelman were present.

A. I had a conversation with Dr. Needelman and a conversation with Sally Rossman.

The Court: When you talked to Sally was Dr. Needelman there?

The Witness: Yes, sir.

By Mr. Roberts:

Q. Was he present and heard the conversation?

[fol. 217] A. Yes, it was in his inner office.

The Court: They called Sally in there and the three of you were there?

The Witness: Four of us, two agents, Dr. Needelman and Sally Rossman.

By Mr. Cline:

Q. Continue with the gist of that conversation as best you can recall.

A. At that time, since having picked up these prescriptions and observing the names on the prescriptions in the interim between the afternoon of the 22nd and the time I talked to Dr. Needelman on the 23rd, that was in the afternoon also, I secured from my files and other files over in Miami Beach photographs then available of a number of these people we are talking about, Fidele Garcia, Gerald Miller, Harvey Sachs, Alice Buononito and Abe and Lottie Bruches. I laid the photographs down on Dr. Needelman's desk in front of him and asked him if these were the same people we had been talking about, and had talked about, whose names appeared on the prescriptions.

Q. Are these the photographs you have just referred to?

A. These are the very photographs.

Q. You exhibited these to Dr. Needelman?

A. I did.

Q. What was his response?

[fol. 218] A. His response was immediate. "Those are the people". Then I had a conversation with Sally Rossman in Dr. Needelman's inner office there and asked her if she had written any of the notations on any of the prescriptions, and she said that she had. That she had written the words, "To be filled," and all of the dates, as best she could recall—practically all of the August 6, 1955 dates she said she wrote. There were two or three, if my memory is right, that she couldn't quite say whether she wrote them or not. The main portion she was positive she had written in the date and those words, and I asked her on whose instructions

it was, and she told me it was Dr. Needelman who told her to do it, and that she had done it at the time of him departing for his vacation, and I asked her where she kept the prescriptions. She said that she and Miss Fredericks kept the prescriptions locked up in their desk in the reception room of the office. Then I exhibited the photographs to her and she was likewise able to identify them with the exception of the Bruches, if my memory is right. She was not too sure about the Bruches' photographs. But the other persons that I showed her in the photographs, Fidele Garcia, Gerald Miller, Alice Buononito and Harvey Sachs, she recognized them from the photographs. I asked her what she did with the money that she collected for the pieces of paper. She said that she put the money right there in the desk drawer with the unused prescriptions, and I [fol. 219] asked her what she did with the money. She said that although she did not deposit it, it was for deposit in Dr. Needelman's account, although she herself said she never carried the money to the bank. I asked her if she was a registered nurse and she said, "No." I asked her if she was acquainted with any other activities of these people such as Fidele Garcia and Gerald Miller other than when they came there to the office. That's all she knew about them, and that was about the extent of the conversation with Sally Rossman and Dr. Needelman on that date.

Q. Did you have any conversation at any time during the course of this investigation with Mr. Waxman regarding his instructions from Dr. Needelman, if any?

A. Yes.

Q. What was the extent of that?

A. That was on September 28th. That was on the occasion on the same date that I made the physical count of the inventory of his drugstore. At that time certain of the prescriptions which were his—that is, the initial "W" on them, I asked him if he had filled these prescriptions and he said, "Yes". I asked him why he had filled these prescriptions or even allowed them to be filled at his store. His answer was, "I must have been stupid". He said then that Dr. Needelman, upon leaving for Europe, had brought all of the prescriptions, the one for Fidele Garcia, Gerald [fol. 220] Miller and all of them, including the Bruches, to

his store and suggested to him, Mr. Waxman, that he fill them out; that he examined the prescriptions and rejected those of them other than the Bruches. That he would not hold and keep those at his store, but that he did agree to keep the Bruches and that he did keep them. I then asked him why he did that specifically, and he said that when Dr. Needelman came to the store on getting ready to go to Europe and wanted him to take all these prescriptions and handle them, and that Dr. Needelman told him that "These addicts are patients of mine and it is all right, and they are registered with the Narcotic Bureau". That is what Dr. Needelman told him. And I said, "You, as a fact, know, I believe, there is not thing as a registered addict in my bureau". And he said, "Yes, I know that, but the Doctor said that it was all right, so I took them", and he repeated this conversation, those words, to me. In fact, he repeated it about five times during that conversation, "I must have been stupid."

Mr. Cline: Thank you, Mr. Rudd. Your witness.

Cross examination.

By Mr. Roberts:

Q. What is your investigation—your first investigation in this matter was on what date?

A. My first investigation that initiated this matter was on September 21st.

[fol. 221] Q. The first conversation you had with Dr. Needelman or Mr. Waxman or Mr. Kamisarow was when?

A. In regard to this case?

Q. Yes.

A. 22nd of September, sir, 1955.

Q. That was in the morning; is that right?

A. No.

Q. Tell me when it was.

A. The first conversation that I had with Mr. Kamisarow was at the store and that was about noon, sir. The first conversation with the defendant, Dr. Needelman, was in the afternoon in the vicinity of two or two-thirty P.M. Right around in there.

Q. And then after talking to Dr. Needelman, about two or two-thirty, you went away—you went where?

A. To the drugstore, sir.

Q. Was Mr. Waxman there at that time?

A. Yes, sir.

Q. And is that when you had this conversation you just related, or did you go back another time?

A. No. On the 22nd my conversation—the lengthy conversation I had with him was on the 28th.

Q. Dr. Needelman, I think you said, had told you that he had gone on vacation?

A. Yes, sir.

[fol. 222] Q. And he had prepared these prescriptions and left them there in his office?

A. In the office and at the drugstore.

Q. The Bruches at the drugstore and the remainder of them in his office.

A. Yes, sir.

Q. By the way, on one occasion today I have heard you mention the name of Dr. Szekely.

A. Yes, sir.

Q. Who was he?

A. Dr. Szekely—I saw a man who I first saw in Dr. Needelman's office on the occasion of my first visit to him. He was talking to Dr. Needelman in the foyer, the reception room, but he left immediately and I did not talk to him until quite a few days later. Dr. Szekely—so he told me sometime later on—had been hired by Dr. Needelman to watch over the office there, but Dr. Szekely was not a doctor in the State of Florida—

Q. At what time was he not a doctor?

A. Not a Florida doctor—at the time the Doctor went to Europe.

Q. Do you know if the doctor had a licensed Florida physician in his office at the time he left to go on his vacation?

A. No, I don't know. Dr. Szekely told me that he got his [fol. 223] Florida license to practice after the Doctor left.

Q. You made a very thorough investigation of this matter, no doubt, Mr. Rudd?

A. In what phase, sir? Which phase are you talking about?

Q. As to anything connected with these prescriptions. You tried to get all the information you could, did you not?

A. Well, that's quite a question. I tried to get all the information you could, yes. I got all the information I was looking for, if that's what you mean.

Q. Well, now, did you investigate or ask any questions as to who was in charge of Dr. Needelman's office during his absence?

A. Oh, yes.

Q. Who did you find out or ascertain who was in charge of his office as a physician?

A. I asked Dr. Szekely if he was in charge, and he said, "No."

Q. He took a run-out powder?

A. Oh, no. He couldn't be in charge. He wasn't even a doctor.

Q. In all this investigation you had did anybody mention the name of Dr. Grier as being there in charge until Dr. Szekely got his license?

[fol. 224] A. No. Somebody did mention that a Doctor Grier was there for a couple of weeks, but that he left in a couple of weeks.

Q. Did you talk to Dr. Grier in any manner, way or shape or form, in connection with this investigation?

A. No, sir.

Q. You didn't go to see Dr. Grier to find out if the two weeks he was in charge of the office there he knew about these prescriptions?

A. It was unnecessary.

Q. I asked you, sir, did you?

A. No, sir.

Q. That's fine. Now, did you ask Dr. Szekely when he received his Florida medical certificate to allow him to practice medicine?

A. Yes.

Q. Did you ascertain what date Dr. Szekely was admitted to practice?

A. I recollect to the best of my knowledge he told me.

Q. What date did he tell you?

A. If my memory is right, August 18, 1955.

Q. Dr. Needelman left on August 6th. Is that correct?

A. Yes, sir.

Q. So it would make it approximately two weeks after Dr. Needelman left that Dr. Szekely got his license?

A. Yes, sir.

[fol. 225] Q. And I think your investigation showed that Dr. Grier was there for about the first two weeks after Dr. Needelman left.

A. I made no investigation to ascertain if any Doctor Grier, if there is such a person, was ever there.

Q. Didn't I understand you to say that you knew that a Doctor Grier was there for a couple of weeks right after Dr. Needelman left?

A. No, sir. I said I was told there was a Doctor Grier there, but did not say I knew there was a Doctor Grier there.

Q. Now, who told you that?

A. Dr. Needelman told me; the two girls in the office told me, and Dr. Szekely said there was or there had been.

Q. Then, I presume that all four of them having told you, that you presumed it was unnecessary to verify it?

A. I had no interest in the world in Dr. Grier. It was not necessary for me to verify Dr. Grier.

Q. Weren't some of the transactions involved in this case issued out of Dr. Needelman's office during the two weeks Dr. Grier was there?

A. If Dr. Grier was there there were some prescriptions issued—emanating from that office by the girls during the period August 6th to September 22nd.

Q. And you didn't feel it was necessary to go to Dr. Grier in your investigation to see what he knew about the [fol. 226] issuance of those prescriptions?

A. I found out all I had to know, sir.

Q. Do you know or didn't you know that Dr. Szekely himself issued some of these prescriptions?

A. These prescriptions?

Q. Yes, sir.

A. He may have sold some.

Q. Did you talk to Dr. Szekely at any length about this matter?

A. Yes.

Q. Now, there is a conspiracy charge here involving Dr. Needelman and Mr. Waxman to the effect that Dr. Needelman wanted the patients to go and get their prescriptions filled at Mr. Waxman's drugstore. Were all of these prescriptions that you checked, were they all filled in Mr. Waxman's pharmacy?

A: All the prescriptions which are in this case I found in Mr. Waxman's file right there. There is one in my file which has not been introduced—

Q. I didn't ask you that. Now, Mr. Rudd, you want to be fair in this case?

A. Yes, sir.

Q. Now, that morphine prescription was not written by Dr. Needelman, was it?

A. No. You said "in this case," sir.

[fol. 227] Q. Why are you injecting that doctor's morphine prescription and leading this jury to believe that Dr. Needelman issued it for morphine if it wasn't Dr. Needelman's prescription?

Mr. Cline: Objection. Cross examination is one thing and argument is another, your Honor.

The Court: Overruled.

Mr. Roberts: Read the question, please?

(Thereupon the question was read by the reporter as above recorded.)

The Witness: My understanding is that you want to know if all the prescriptions seized from these defendants in this conspiracy case were written by Dr. Needelman or seized from the defendant Waxman's store. There is one prescription which I picked up which was for one of the persons named which has not been introduced here. It is in my file. If that answers your question inclusively, that is the best I can answer it.

Q. Let's clarify this for the jury. You mentioned that you picked up a morphine prescription for one of these patients of Dr. Needelman's office?

A. Yes, sir.

[fol. 228] Q. One of these seven people we are talking about?

A. That's right, sir.

Q. Now, that was not a prescription that was written or emanated from Dr. Needelman's office, was it, sir?

A. No, but it was cashed by the defendant Waxman at his store.

Q. You don't have a single morphine prescription for Dr. Needelman, do you, sir?

A. Written by Dr. Needelman?

Q. That is involved in this case.

A. No, sir. Not in this case.

Q. Do you know of any instance where Dr. Needelman ever issued a prescription for morphine for any of these six or seven patients involved?

A. No, sir, not at all.

Q. By the way, morphine is a much more potent narcotic than Methadon or Codeine or Demerol is, is it not?

A. If you want to qualify me as an expert before I answer that—

Q. After twenty-two years don't you consider yourself an expert in narcotics?

A. Chemically; I am not a chemist. But to answer your question I will tell you that 1 cc of Methadon by the United States Department of Health Hospital is equal to 1 milligram of morphine and is equal to 1 milligram of heroin.

[fol. 229] Q. Injectable?

A. One milligram, that is all that is quoted.

Q. While we are on that, there is quite a bit of difference in the potency of oral narcotics and injectable narcotics. Is that not so?

A. I am not an expert on the treatment of addictions, sir, but I would say that—I don't think I ought to answer that—the degree of potency.

Q. All right. I won't embarrass you, Mr. Rudd. Let's get back to the trend of thought we are on, getting back to the conspiracy charge.

A. Yes, sir.

Q. You checked the prescriptions, I think you testified that were issued from Dr. Needelman's office during the period from August 6th to September 22nd of approxi-

mately there, of 1955, by looking at his cash book or day book. I think you testified to that.

A. Yes, sir.

Q. Now, all of these prescriptions were filled at Mr. Waxman's drugstore, were they?

A. Your question is a little ambiguous, the first part of your question was. You are talking about prescriptions filled at Mr. Waxman's store. Now you have gone up on another part, and if you will separate them I will answer it.

Q. I will rephrase the question, if you want. All of these [fol. 230] prescriptions that you checked that were issued in Dr. Needelman's office during the period involved, August 6th to September 22nd, they were not all filled at Mr. Waxman's pharmacy?

A. No, sir.

Q. Do you know how many were issued and how many were filled at the Medical Arts Pharmacy, not counting the Bruches?

A. Besides the prescriptions which have already been discussed here?

Q. That's right.

A. I found twenty-eight others.

Q. They were in other pharmacies, were they not?

A. Yes, sir.

Q. Milton Medical?

A. That was one.

Q. How about Miami Beach Pharmacy?

A. No; didn't find any there.

Q. Lee's?

A. Didn't find any at Lee's.

Q. Benson's?

A. Yes.

Q. Do you know if Mr. Wafers may have found some at Lee's or the Miami Beach Pharmacy?

A. I think it is safe to say that if he had found any I would know about it.

[fol. 231] Q. Eliminating the Bruches, whose prescriptions were left at Mr. Waxman's pharmacy, would you want to approximate what percentage of the prescriptions which were issued by Dr. Needelman's office during the period he

was on his vacation,—what percentage of them were filled at Mr. Waxman's?

A. That I found?

Q. Yes, sir. What percentage is Mr. Waxman's prescriptions? What percentage does that fill of the total number of prescriptions that you found were issued by Dr. Needelman's office, excluding the Bruches?

A. If I could look at my report I can tell you exactly. If you want an estimate, let me figure a minute. Which do you want?

Q. Give me an estimate.

A. All right. About seventy-five per cent.

Q. Were filled at the Medical Arts Pharmacy?

A. Yes, sir.

Q. I will tell you what I would rather you do. I would rather you look at the book. Didn't you get twenty-three from Milton Medical?

A. If my memory is right, twenty. I could check my files and tell you exactly, if you want to know; otherwise, I will give you the best I recall.

Q. You don't have to check your file. You just refresh your memory.

[fol. 232] A. It is not my writing. It bears the signature of an agent of mine.

Q. Mr. Waters?

A. Twenty-three prescriptions. I had it pretty close.

Q. Do you know about how many you got from Benson's?

A. Five or six.

Q. Doesn't that refresh your mind. You didn't come close that time Mr. Rudd.

A. It is not my—

Q. I am trying to refresh your memory, that's all.

A. This amount could be correct and could not be. If my memory is right, it is about six.

Q. Do you have any record as to how many you got from Benson's?

A. Yes.

The Court: Step down and get it.

(Witness complies.)

Mr. Cline: Your Honor, Mr. Rudd tells me the information is not available in the courtroom but he can get it later on.

The Court: All right. Bring in the records after you are excused from the witness stand.

By Mr. Roberts:

Q. Let me ask you, Mr. Rudd. Excluding the Bruches [fol. 233] prescriptions, do you recall that you found that there were one hundred eighteen prescriptions issued out of Dr. Needelman's office during that period of time and only fifty-seven were filled by Medical Arts Pharmacy?

A. Before I can answer that question I would have to examine the list of figures in my report. Now you are saying something about sixty-seven and a hundred and fifty-seven or eighty, or something. The number could be off, but I have given you an estimate of the whole business excluding the Bruches, thirty or forty. If you want me to examine my files I will examine them and give you the figures.

Mr. Roberts: I wish you would, sir. Later on you will have an opportunity to get them. We do not want to interrupt the trial here. During the recess perhaps you can get them.

By Mr. Roberts:

Q. When did you first get to know Abe Bruches?

A. I have never talked to Abe Bruches in my life.

Q. When did you first get to know Lottie Bruches?

A. I first heard about these people about 1952 but have never talked to them.

Q. When did you first get to know Renee Pollack?

A. I never met Renee Pollack. Never heard about the person, as I testified here, until this case.

Q. When did you first get to know Harvey Sachs?

[fol. 234] A. Harvey Sachs, I got to know him while examining the files in my office—

Q. I am not asking you that. I am asking you when did you get to know him.

A. You said when did I get to know of him.

Q. No. I said when did you get to know him?

A. I have never met the man.

Q. When did you get to know Fidele Garcia personally?

A. That has been some time ago. I have run into him on a number of occasions. The first time would probably be about two years ago. Before that. Yes, before that.

Q. When did you first get to know personally Gerald Miller?

A. I arrested him in 1949 in Miami Beach.

Q. When did you first get to know Alice Buononito?

A. The first time I ever got to know her was when I arrested her husband for violation of the narcotic law. I cannot remember the date. About three or four years ago. I could check it up.

Q. Do you know what Renee Pollack's physical condition was on August 6, 1955?

A. No, sir.

Q. Do you know what Harvey Sachs' physical condition was on August 6, 1955?

A. No, sir.

Q. Do you know what Abe Bruches' physical condition [fol. 235] was on August 6, 1955?

A. No, sir.

Q. Do you know what Lottie Bruches' physical condition was on August 6, 1955?

A. No, sir.

Q. Do you know what Fidele Garcia's physical condition was on August 6, 1955?

A. As a doctor or as a narcotic agent?

Q. I am asking you if you know what his physical condition was, whether he was sick or whether he was well, or whether he was suffering. Whether he had any pain or whether he was not suffering and had no pain. Do you know that? I make no difference between your knowledge of Fidele Garcia's condition on August 6, 1955 than I do for the others of whom I asked you and you were able to say, "No, sir."

A. I saw Fidele Garcia on or about August 6th. Not to talk to, but observe him, and I want to give the best answer I can.

Q. Do you know whether he was suffering or not?

A. No, sir, I don't.

Q. Do you know what Alice Buononito's physical condition was on August 6, 1955?

A. No, sir.

Q. Do you know what Gerald Miller's physical condition was on August 6, 1955?

A. No, sir.

[fol. 236] Q. What date was it you told me you arrested Gerald Miller?

A. I didn't say the date. I said I arrested him in 1949.

Q. That is the date, Mr. Rudd, 1949, is it?

A. That is the year.

Q. When did you see him again after that, if you recall? Let me ask you this: When is the last time you have seen him?

A. I see him quite often.

Q. When is the last time you have seen him?

A. About six months ago.

Q. Where did you see him?

A. Tenth Avenue just this side of Fifth. Right across from Powell and Company.

Q. I notice that these pictures have "Miami Beach Police Department" on them. Is that where you got these pictures?

A. I cannot recall. One or two I know I got over there. The others I got from my files. I imagine that one there is from the Miami Beach Police Department. That is apparently a Miami Beach photo also. That one is Miami Beach Police Department. That one is Miami Beach. That one is and that one is (indicating).

Q. The one that is Abe Bruches doesn't have Miami Beach on it?

A. That is either New York or Miami Beach.

Q. Do you know, as a matter of fact, Mr. Rudd, that before anybody can secure a position on Miami Beach they [fol. 237] have to go down to the Police Department and get fingerprinted and photographed to get a permit to work on the Beach?

A. There is a registration law but I don't know whether it is before or after. I don't know.

Q. That is particularly so, isn't it, for people like barbers and people who handle food, where things can get contaminated?

A. I do not know.

Q. Beauty parlors?

A. I do not know the purpose of the law.

Q. You just know it is there.

A. Yes, sir.

Q. Would you say to the best of your knowledge, Mr. Rudd, that this is the cash book or daily record book that Dr. Needelman showed you at the time you were over in his office in September, 1955?

A. Well, sir, I couldn't even say whether it is the same book he showed me. He showed me a book similar in structure to that, but I couldn't say whether it is the same book or even the same papers.

Q. At the time that he showed it to you did you examine it with any degree of care?

A. I was not interested in any information other than the names and dates of the entries of the names which we are talking about.

[fol. 238] Q. I think you testified that there was twenty dollars for Fidele Garcia.

A. I don't know whether there is in that book. I haven't examined that book. There was in the book he showed me.

Q. In the book that he showed you did you find any item of more than ten dollars for Fidele Garcia during the period of that year that Dr. Needelman was present in his office, just prior to August 6th when he left on his vacation?

A. I didn't look for that period prior to August 6th. Could have been and not been. I don't know.

Q. Well, why did you just want to start at August 6th, Mr. Rudd; if you thought there was some more violations prior to August 6th wouldn't you have looked for those prior thereto?

A. Well, Dr. Needelman was at his office and in town and present and available to be in personal attendance, but from August 6th to September 22nd he was not present and available. Therefore, those are the dates I was interested in and did inquire about.

Q. Weren't you interested to see if the doctor issued prescriptions, two prescriptions on any one day, for Fidele Garcia while he himself was in Miami Beach in his office?

A. Not particularly so.

Q. You weren't? You just wanted to know if there were two or more prescriptions issued by the office while Doctors Grier and Szekely were in charge?

A. No. I had heard on the 22nd that there had been some [fol. 239] doubling of prescriptions.

Q. And you weren't interested at all to find out if there was any doubling up going on before Dr. Needelman left on his vacation?

A. He could have done it.

Q. You weren't interested in looking to ascertain whether that was so or not?

A. No, because he was in town, apparently, then. I am interested in the period that he was not.

Q. You just were interested in the time that Doctors Grier and Szekely were in his office?

A. I had no interest at all, sir, and had none and still have not, in Doctors or Grier.

Q. I am fixing the period, Mr. Rudd, to help you along, the period that Dr. Grier and Dr. Szekely were there. You were only interested in that particular period?

A. August 6th, or it was about August 1st, to tell you the truth, until the 22nd.

Q. And you didn't go back prior to that time to see if Dr. Needelman himself ever gave the prescriptions?

A. I may have, but if I did it was just incidental to my main point of inquiry.

Q. If you did you didn't find any time where he did, did you?

A. I might have, but I cannot recall it now, sir.

[fol. 240] Q. Wouldn't you have made just as copious a note if you had found it before August 6th as you did when you found it while Dr. Grier and Dr. Szekely were there?

A. No, sir. The law as affected directly, that's all I am interested in,—the narcotic law.

Q. What time in the afternoon on September 22nd was it that you said you talked to Dr. Needelman in his office?

A. Somewhere in the vicinity of two-thirty.

Q. Do you know what day of the week September 22nd fell on?

A. No, sir.

Q. I will give you a calendar for the year 1955 and ask you if that will assist you in telling you what day of the week September 22nd is.

A. Here it says "Thursday."

Q. Would you dispute that calendar? You dispute everything else. Do you dispute that calendar?

A. I wouldn't trust it with my life.

Q. Do you think that I made that calendar up?

A. You asked me, sir.

Q. And do you dispute it?

A. As man to man, I don't think you would do that, Mr. Roberts.

Q. I am asking you.

A. You might be misled on that calendar, but I don't [fol. 241] believe you would intentionally attribute such a falsity to me—not you.

Q. What date does that say September 22nd fell on?

A. Thursday.

Q. When you went over to Dr. Needelman's office did you see his sign on the door, what afternoon during the middle of the week he is not in his office, do you recall that sign on his office door?

A. No, sir. It very well could have been.

Q. He does close on Thursday, doesn't he?

A. I don't know, sir.

Q. You made copious notes, did you not, at the time you started the investigation of this case?

A. I made several notes, yes, sir.

Q. And you have refreshed your recollection from the notes that you made; refreshed your memory? Before coming to testify you refreshed your memory by reference to those notes, did you not?

A. Yes, sir.

Q. How many patients did you see double fees for as to the entries for two prescriptions, for how many different patients did you notice that in that cash book, if you recall?

A. I recall only one name, sir, Garcia, at this time. A year and a half later I can only recall one.

Q. By the way, Mr. Rudd, what other documents or office [fol. 242] records did Dr. Needelman show you when you were there in the office, September 21st, 22nd or 23rd or whatever the dates may have been? Do you recall him showing you any other records?

A. He didn't show me any other records.

Q. Do you recall him showing you the medical histories of various people involved?

A. He did not.

Q. You know you saw these identified by Miss Rossman and Miss Fredericks the other day?

A. Yes, sir.

Q. Those were not exhibited to you at that time?

A. I didn't ask him.

Mr. Roberts: That's all.

By Mr. Chappell:

Q. Mr. Rudd, in your official position as a narcotic agent for the Treasury Department, do you go around and visit and inspect the narcotic prescription files in various drug-stores?

A. Yes, sir.

Q. When did you inspect Mr. Waxman's narcotic prescription file before this?

A. A long time. I could give an exact time. I couldn't give an average of the times previous over there except one occasion, but it has been quite a while since I, A. C. [fol. 243] Rudd, had examined his file.

Q. How many assistants, if you know, have you?

A. At this time?

Q. At the time in 1955.

A. Two.

Q. You had two assistants under you?

A. Yes, sir.

Q. They do the same type of work as you do, do they not?

A. No, sir. One of them only does what we call street work, out on the street.

Q. You said it has been quite some time you had checked his narcotic prescription file?

A. Yes.

Q. Give us some idea of what you mean by "quite some time" I don't mean exactly.

A. About a year, I would say. Just a guess, previous to this case.

Q. And you did go through his narcotic prescription files at that time?

A. Well, the time I would examine any druggist's file, sir, I would go through it on recent dates.

Q. How long a time before that one year had you likewise examined the prescription narcotic file?

A. I cannot say, sir. I cannot remember now.

Q. Now, the State has a narcotic investigative agent do [fol. 244] that; is that right?

A. Yes, sir.

Q. How many men compose that investigative bureau?

A. Two that is in this area.

Q. Do they likewise go around and investigate and inspect narcotic prescription files and so forth?

A. Yes, sir.

Q. You wouldn't know when they had investigated Mr. Waxman's narcotic prescription file, would you?

A. No. They could be doing it every day for all I know, maybe, for a long period of time.

Q. They have similar duties except they are employed by the State of Florida, and you are employed by the United States?

A. Yes. The law is identical.

Q. You heard; I believe, the reading of the testimony of Mr. Kamisarow where he stated that on three or four occasions that when they were out of this prescription of a particular type of medicine that was called for in the Bruches' prescription that they went out and had them filled elsewhere? I believe you heard that.

A. Yes, I recall that.

Q. You recall that?

A. Yes, sir.

Q. Now, Mr. Rudd, in your examination of other drug-

[fol. 245] stores did you find any of these Bruches' prescriptions that had been filled in any of those drugstores?

A. No, sir.

Q. Did you check?

A. To look for any?

Q. Yes.

A. No, sir.

Q. You didn't look for any?

A. No, sir.

Q. If Mr. Kamisarow's testimony was correct and he came to Mr. Waxman's drugstore and they were out of that particular type of drug called for and they gave him the prescription, that would have been, so far as you know, on one of the so-called printed forms, would it not?

A. The offset printed forms, yes, sir. If the purported prescription had been given to one of the Bruches during the period August 6th to September 22nd, all I can say, I presume it might be one of those offset ones.

Q. Did you check to see if there were any of them missing in the Waxman's pharmacy?

A. I had no way of knowing what would be missing from his store. I wouldn't know.

Q. Let me ask you this question: These prescriptions which you claim you picked up from other stores, twenty-three others: Milton's Pharmacy, Milton Medical, were any of those for the Bruches?

[fol. 246] A. No, sir. There were no Bruches' prescriptions found only on the one location.

Q. That is during this period of time that you are talking about?

A. Not at that time.

Q. Now, you testified that you found one prescription for morphine written to Lottie Bruches.

A. No, I believe it is Abe Bruches. I don't believe I said Lottie Bruches.

Q. Have you got it right here on your desk?

A. I should have it there if it isn't upstairs.

Q. That is the one you said was written by Dr. Greene?

A. It was written by a doctor other than Dr. Needelman.

Q. I thought you said it was written by a Dr. Greene.

A. I didn't say anything about Dr. Greene.

Q. Let's find out what doctor wrote it. Is this the prescription that you had in mind?

A. Yes. This is the one we have been talking about.

Q. Who was that written for?

A. Abe Bruches.

Q. Who wrote that prescription?

A. I would have to examine it, sir. There is a signature of one Greene. Something Greene, Dr. Irvin M. Greene. I don't know who actually wrote it.

[fol. 247] Q. Do you know who Dr. Greene is?

A. Do you mean whether I know him personally?

Q. Do you know whether he is an M. D. or not? Does he have a narcotic license?

A. He shows a registered name which means that he is registered and permitted to write anybody prescriptions, so we can only assume that this doctor does have a narcotic license.

Q. What was the date he wrote that prescription for Abe Bruches?

A. September 15, 1955.

Mr. Chappell: All right.

The Court: Anything further?

Redirect examination.

By Mr. Cline:

Q. Mr. Rudd, at what drugstore was this prescription filled, this Greene one?

A. Medical Arts Pharmacy.

Q. What is the prescription for?

A. Ten one-grain morphine sulphate tablets.

Q. In connection with your examination and your investigation of this case, did you run across any prescriptions or alleged prescriptions for any of these seven persons executed by either Dr. Grier or Dr. Szekely, "Not for charge"?

A. None, sir.

[fol. 248] Q. Is this book or any book similar to it indicating the doctor's fee in that record required to be kept by the Federal Narcotic Bureau?

A. No, sir.

Mr. Cline: That's all. Thank you, Mr. Rudd.

(Thereupon, a short recess was had, and the jury retired from the courtroom.)

DENIAL OF MOTION FOR PRODUCTION OF NOTES

The Court: I will deny the request for the notes, because they may involve many things. You may see the case report.

(Thereupon, the jury returning to the courtroom and counsel conceding that the defendants were present and waiving polling of the jury, the following proceedings were had.)

The Court: Can you give us those figures?

Mr. Rudd: Approximately sixty-six per cent filled at Waxman's drugstore?

Mr. Rudd: Sixty-six per cent of all the prescriptions dispensed from Dr. Needelman's office during the period August 6th to September 22nd, regardless of all these—re-
[fol. 249] gardless of what store, sixty-six per cent were filled at Mr. Waxman's store.

Mr. Chappell: Did that include the Bruches?

Mr. Rudd: No, sir, it does not include the Bruches.

Recross examination.

By Mr. Roberts:

Q. How many did you get from pharmacies other than Mr. Waxman's?

A. During the period August 6th to September 22nd, that period only, there were twenty in one pharmacy, four from another and eight which could be identified at all from Benson's. Six more taken from Benson's which cannot be identified as to what year they were written, because there was absolutely no date, therefore, they are entirely discarded as far as I am concerned. They could be written in 1898—

Mr. Roberts: I object to the witness making a speech to the jury.

The Court: The jury will disregard everything but the numbers.

The Witness: Eight dated and signed by the doctor during the period August 6th to September 22nd.

By Mr. Chappell:

Q. Did I understand you to say of your accord that you were discarding certain number of prescriptions filled at other drugstores because they were not dated?

[fol. 250] The Court: That's right.

By Mr. Chappell:

Q. Did it show when they were filled?

A. No.

Q. Do you know where these were filled?

A. No, sir. All I can say is where I found them, but actually where they were filled, I would not know.

Q. Who wrote this on the back of these prescriptions, "No. 'so-and-so' was filled on August 8, 1955"; who wrote that?

A. This is my handwriting, sir.

Q. Didn't you state there that it was filled on such-and-such a date in August, 1955?

A. Yes, sir. I say that because this number of 2369 was filled on August 8th, because that is what the druggist's records other than this show, that that prescription was filled on that date, although it is not dated at all.

Q. What drugstore was that taken from?

A. That one was found at Benson's. Whether it was filled there or not, I do not know.

Q. It was found in their narcotic prescription file?

A. Yes.

Q. Look at the next one. Who wrote that?

A. I wrote that with a typewriter and put my initials on it.

Q. What date was that filled?

A. This was filled September 18, 1955.

[fol. 251] Q. At what drugstore?

A. I found this on the Benson's drugstore file.

Q. Are there any more notations on the back of it?

A. Except for my initials and the date, that's all.

Q. Benson's store, that is a pharmacist on Miami Beach?

A. Whether they had a pharmacist or not, they had a tax stamp. It is not my official business whether they have a pharmacist or not.

Q. They did have a narcotic tax stamp?

A. They did at that time, yes, sir.

Mr. Chappell: That's all.

Mr. Cline: That's all.

Thereupon: EDWIN S. WATERS was called as a witness on behalf of the Government, having first been duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Cline:

Q. State your name, please.

A. Edwin S. Waters.

Q. What is your occupation?

A. Federal Narcotic Agent.

Q. How long have you been a Federal Narcotic Agent?

A. Since January 3, 1955.

[fol. 252] Q. And you were so employed during the months of August and September, 1955?

A. That's right.

The Court: Can it not be stipulated that this agent was the one that was associated with Mr. Rudd, whose name has been mentioned several times as being present in the conversation?

Mr. Roberts: Yes, sir.

Mr. Chappell: Yes, sir.

By Mr. Cline:

Q. Were you present during the period that Mr. Rudd interviewed Mr. Waxman and Dr. Needelman on or about the 22nd of September, 1955?

A. I was.

Q. Where did that conversation with Mr. Waxman take place?

A. In the Medical Arts Pharmacy.

Q. Do you recall approximately the time of day when you talked to Mr. Waxman in the Medical Arts Pharmacy?

A. I don't recall the specific time. It was probably some time late afternoon of that day.

Q. What time and whereabouts did you talk to Dr. Needelman on that day?

A. In Dr. Needelman's office on Miami Beach previous to talking with Mr. Waxman.

[fol. 253] Q. Did you accompany Agent Rudd to the Medical Arts Pharmacy at any time prior to your conversation with Dr. Needelman in his office?

A. I did.

Q. What, if anything, did you do or say, or did Mr. Rudd do in your presence at the Medical Arts Pharmacy before your conversation with Dr. Needelman on the 22nd?

A. Agent Rudd and Mr. Bellinger and myself went to the Medical Arts Pharmacy. It was in the early afternoon or around noon time, I am not sure, on that date. And Mr. Rudd asked for Mr. Waxman; and it was Mr. Kamisarow that was behind the drug counter there. Mr. Kamisarow stated that Mr. Waxman was not there—

Mr. Chappell: I object to any conversation that took place with Mr. Kamisarow not in Mr. Waxman's hearing and presence.

The Court: I sustain the objection.

By Mr. Cline:

Q. What did you do on that occasion?

A. I witnessed Mr. Rudd take the narcotic prescription file and the prescriptions that were seized at that time, or alleged prescriptions, and I initialled those prescriptions for future identification.

Q. Then what did you do?

[fol. 254] The Court: I take it we can stipulate that the same prescriptions Mr. Rudd talked about are the ones initialled, and that he did initial them?

Mr. Chappell: Yes, sir.
Mr. Roberts: Yes, sir.

By Mr. Cline:

Q. What did you do after you left the Medical Arts Pharmacy?

A. We went over to Dr. Needelman's office which is just about a block or so away.

Q. Who was present?

A. Mr. Bellinger, Agent Rudd and myself went into Dr. Needelman's office and Dr. Needelman was there and Dr. Szekely was there and some other man, I think, was also in the office. I don't know who that was.

Q. What was the gist of the conversation that took place in Dr. Needelman's office at that time?

A. Agent Rudd introduced himself and Mr. Bellinger and myself to Dr. Needelman and we identified ourselves and Agent Rudd told Dr. Needelman he was making an official inspection of his narcotic activities—his present narcotic activities—and asked Dr. Needelman if he had any objection to answering any questions. Dr. Needelman replied he did not. He did not have any objection at all. Mr. Rudd then showed him the prescriptions we had just taken from the Medical Arts Pharmacy and asked him, [fol. 255] "What about these prescriptions?" Dr. Needelman said, "Yes, these addicts—" referring to the people as "addicts"—there was quite a conversation ensuing between Dr. Needelman and Mr. Rudd mostly, and Agent Rudd asked him about these prescriptions, and Dr. Needelman said he thought it was wonderful that these addicts were only taking Methadon,—that they were known heroin and opium users and that heroin on the street was sold at exorbitant prices, and they could go about their daily work without going on the street and getting other narcotics. Mr. Rudd asked him if he had discussed with any of them about Lexington, or taking the cure at Lexington, and Dr. Needelman said that most of them would not or could not go there, because they had to work, and so forth. There was some discussion in regard to the amount of dosage per prescription and Mr. Rudd asked the doctor, did he treat

anyone else other than these patients with narcotics. He said he had, but only on rare occasions. And it was ascertained that the Doctor felt that one Methadon tablet consisted of one dose of narcotic.

Q. Was there any discussion about the method of handling the prescriptions while Dr. Needelman was on his vacation in Europe?

A. The Doctor said he left the prescriptions with the girls in the front office, the office girls, to give out to these addicts as they called for them; and Mr. Rudd asked him if [fol. 256] he had told the addicts—if there was any specific time they should come, and he said, "No, they came when they felt they needed it and the office girls collected the fee." Then Dr. Needelman explained that he left some of these prescriptions at the Medical Arts Pharmacy for Abe and Lottie Bruches, Codeine prescriptions, and there was an arrangement made there for the Medical Arts Pharmacy to fill these prescriptions as the Bruches called for them, and he collected five dollars, or two-fifty, at the time, depending on the number of prescriptions, and that he had this collected or had this received from the Medical Arts Pharmacy,—that he had just received from the Medical Arts Pharmacy, one hundred seventy-five dollars which the Medical Arts Pharmacy had collected as his fee while he was absent from the office. He then produced voluntarily the unused prescriptions that he just brought back from the Medical Arts Pharmacy,—the number over and above what the Bruches had used there.

Q. Was there any conversation on the part of Dr. Needelman as to why he had left the Bruches' prescriptions at the Medical Arts Pharmacy and left the others in the office?

A. Because the Bruches, he said, got off of work quite late, later than his office hours. That they could not walk around to the office before he closed, and that is the reason he left it at the Medical Arts Pharmacy.

Q. After you left the Doctor's office on that day what then [fol. 257] did you do?

A. We then went back to the Medical Arts Pharmacy.

Mr. Chappell: In order to keep the record straight, at this time I will object to all this testimony upon the ground

that it immaterial and irrelevant as far as the defendant Waxman is concerned, and respectfully request the Court to instruct the jury that it is not binding on him, if it is not in his hearing and presence.

The Court: I will overrule the objection, and I will instruct the jury on the law at a later date.

By Mr. Cline:

Q. You say you left Dr. Needelman's office and returned to the Medical Arts Pharmacy?

A. Right.

Q. What took place at that time and who was present, to the best you recall?

A. Mr. Waxman was there, Mr. Kamisarow was there, and Mrs. Waxman was also there, if I recall; and Agent Ruff asked Mr. Waxman—

Mr. Roberts: I object to the conversation.

The Court: All right. Same ruling. Overruled.

[fol. 258] The Witness: Mr. Rudd asked Mr. Waxman if he had any prescriptions there in the drugstore for the Bruches or anyone else. He first looked in the safe and asked Mr. Kamisarow if there were any more prescriptions left. And Mr. Kamisarow said, "No." He had given one hundred seventy-five dollars and the unused prescriptions to Dr. Needelman previously that afternoon.

By Mr. Cline:

Q. Was there any more conversation there at the drugstore that afternoon when Mr. Waxman was present?

A. There was not anything specific that I can recall other than Mr. Waxman wanted to know what was going to happen, and Mr. Rudd said at that time he didn't know, he was just making an official inspection there.

Q. On the occasion of your interview with Dr. Needelman in his office was there any conversation on the part of Dr. Needelman with regard to the instructions, if any, that he had left with the nurses in his office regarding the amount of prescriptions that were to be issued to the various so-called patients and the amount that was to be charged for these?

A. Yes. Mr. Rudd asked him about that and Dr. Needelman stated that he instructed the office girls that when these addicts came during the day or when they came to the office they were to give them—date the prescriptions and give them to them and collect the specified amount,—[fol. 259] ten dollars or five dollars, depending upon the person.

Q. Do you recall any conversation on the part of Dr. Needelman what was the normal dosage of any of these narcotics?

A. Yes, a discussion regarding the amount of dosage, and Dr. Needelman agreed that one tablet was considered one dose.

Q. Calling your attention to the date of September 28th, what, if anything, did you do in connection with your official investigation of this case?

A. On that particular day I accompanied Dr. Needelman and Mr. Bellinger to the Medical Arts Pharmacy on Miami Beach and Mr. Waxman was there, at which time Mr. Rudd asked him a number of questions regarding this matter of the filling of prescriptions.

Q. What did Mr. Waxman have to say about his part in these instructions?

Mr. Chappell: Don't lead the witness. I object to it.

The Court: Sustained.

By Mr. Cline:

Q. What conversation took place between Mr. Waxman and Agent Rudd on that date?

A. Mr. Rudd asked Mr. Waxman about the situation in regard to these prescriptions that were taken from his drugstore and written by Dr. Needelman, and Mr. Waxman said that Dr. Needelman had, prior to leaving on his [fol. 260] vacation on August 6th, on or about that date, that he had appeared at the drugstore with a number of prescriptions and that Dr. Needelman asked him—Mr. Waxman—if he would handle the prescriptions there,—that is, when the addicts came in for the prescriptions, to take and fill them and collect his fee. And Mr. Waxman stated at that time that he told Dr. Needelman that he

wouldn't handle the Methadon prescriptions. That he would only handle prescriptions for the Bruches because it was only Codeine. He said, "I must have been stupid to do this for Dr. Needelman."

Q. Did you have any conversation with Mr. Waxman in regard to the persons who were the recipients of the various narcotics?

A. Yes, I believe on that date Mr. Waxman identified the mug shots or photos of these people as the ones that were obtaining the prescriptions at the drugstore.

Q. Are these the photographs that you refer to?

A. Yes.

Q. Do you recall any further remarks made by Mr. Waxman regarding conversations that he had with Dr. Needelman regarding these various prescriptions?

A. Dr. Needelman, as I say, filled out all the prescriptions and wanted Mr. Waxman to handle them, and Dr. Needelman told him not to worry, these were registered with the Bureau of Narcotics.

[fol. 261] Mr. Cline: Your witness.

* * * * * * * *

[fol. 337] Dr. Harry Needelman was called as a witness in his own behalf, and having first been duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Roberts:

Q. What is your name?

A. Harry Needelman, M.D.

Q. Where do you live, Doctor?

A. 310 East DiLido Drive.

Q. That's on Miami Beach?

A. That is correct.

Q. What is your profession, sir?

[fol. 338] A. I am a general practitioner.

Q. Are you licensed to practice in the State of Florida?

A. I am.

Q. Under the Treasury Department do you have what is called a narcotic license to dispense narcotic drugs?

A. I do, and have had since I have been in practice for the last nine and a half years. I am a graduate of Middlesex University in 1938.

Q. And have you had a large practice in Florida since that?

A. Since January, 1948.

Q. Are you licensed to practice in any other state?

A. Yes, I have been licensed to practice in Massachusetts since 1939 and the State of New York since 1946.

Q. Are you married, Doctor?

A. I am.

Q. Any family?

A. Yes, I have a wife and two children. A little girl of eight and a boy almost five.

Q. Were you in the military service of the United States during the last war?

A. Yes, I was.

Q. In what capacity?

A. I was Battalion Surgeon with the Texas Division of the 26th Infantry Division, and saw active service and am [fol. 339] proud to say I was the first American doctor to land in the invasion of Europe.

Q. How long were you in the Service?

A. I was in the Service for three years and nine months, serving almost three years overseas.

Q. When you returned from Service, where did you practice?

A. When I returned from the Service, I took an additional year of training at the Jewish Sanitarium and Hospital in Brooklyn before coming down to open my office here.

Q. And you have been in the same office? Is that correct?

A. The same place for almost ten years.

Q. Doctor, on August 6, 1955 did you and your wife take a vacation?

A. Yes, sir, we did.

Q. About how long were you gone?

A. We were gone for seven weeks although we had anticipated being gone for perhaps ten weeks.

Q. You cut your vacation short?

A. Yes, sir.

Q. Do you know a Dr. Szekely?

A. I do.

Q. When did you first know Dr. Szekely?

A. I first met Dr. Szekely in 1946 when he and I were residents of the Jewish Sanitarium in Brooklyn. At the time when I left there Dr. Szekely went into practice in [fol. 340] 1947 in New York City and I came down here to take my examination to practice in Florida.

Q. At that time, then, he was a practicing physician in New York?

A. Yes; Dr. Szekely had been practicing in New York for about six or seven years before coming to Florida.

Q. Do you know the circumstances of his coming to Florida?

A. Yes, I do. Dr. Szekely had a very successful practice in New York. He decided he would like to practice here in Florida. However, he was a graduate of a foreign school, graduating in Italy, and he wished very much to practice in this state. He wrote to Dr. Homer Pearson, Secretary of the Medical Board, who informed him that as a foreign graduate he would have to spend at least two years here in an approved hospital. Dr. Szekely wrote to every approved hospital in the State of Florida and was refused admission by every hospital he wrote to. After being refused at Mt. Sinai, where I have an active standing, I approached three members of the Board at Mt. Sinai, Dr. Marks, Dr. Nathan and a third doctor, and asked that they should reconsider admitting Dr. Szekely to the hospital. This they did and wrote him a letter telling him they would admit him as a resident to the Mt. Sinai Hospital.

Q. He was admitted?

A. He was admitted to the hospital and after two years [fol. 341] of staying with the hospital he was permitted to take an examination to practice.

Q. Do you recall the date when he took his examination to practice?

A. He took his examination to practice in the fourth week of June, 1955.

Q. Now, ordinarily, Doctor do you know how long it takes after one takes the examination before they are either admitted or denied practice?

A. In my own case, it was six weeks.

Q. About six weeks?

A. Yes.

Q. That was in June of 1955 when he took his examination, so ordinarily, six weeks later he would either be admitted or denied?

A. He should have had his license to practice approximately the 1st of August of 1955.

Q. Now, at that time were you contemplating taking your vacation on or about August 6th?

A. I was contemplating taking my vacation and Dr. Szekely told me that he had spent most of his savings as a resident for two years since the salary was so small in the hospital, and he was most anxious to see if he couldn't derive income so as to have money to open his office, and I offered to let him take over my practice during my vaca- [fol. 342] tion and give him a chance to take over a very nicely run practice where we saw between thirty and forty patients a day.

Q. Tell me what arrangements you made with Dr. Szekely and Dr. Grier about your office while you were on your vacation that summer.

A. The arrangements were for Dr. Szekely, as soon as he got his license, to come into the office and derive forty per cent of the total income or to guarantee him a minimum of one hundred twenty dollars a week. He should earn much more than that—I certainly felt he should during the time that I was away. Now, we had expected Dr. Szekely to receive his license, as I say, any time from August 1st, and when August 5th arrived and Dr. Szekely still didn't have his license, I became quite concerned, and I immediately started calling other doctors in the area who might be kind enough to come down and adopt the practice until Dr. Szekely got his license, so that he still could go ahead and earn money he needed to open an office. After I called perhaps twenty or twenty-five doctors we came to Dr. Grier, and he told me on the telephone—I ex-

plained the forty per cent situation to him—and he told me he would be happy to do either one or two things, to either run the office until Dr. Szekely got his license, or if Dr. Szekely didn't get his license, he would be willing to stay in the office for the total period I was going to be away [fol. 343] from the office. I explained to Dr. Grier also that I had planned a seven week trip to Europe, and that perhaps if I would come back and be tired, I might want an additional three weeks to rest, and would he be prepared to spend ten weeks in the office. He said he would be happy to. Dr. Szekely also said he would be happy to spend ten weeks in the office. The day before I left Dr. Grier told me on the telephone he would be happy to come down to the office, but he still had some patients of his own. This was Friday, and he would come in on Saturday to take over with Dr. Szekely. Dr. Szekely didn't come into the office until Saturday at twelve o'clock noon because he still had some patients Saturday morning, so I barely had a chance to speak to Dr. Grier before he came to the office. He understood he was to receive forty per cent of the total income until such time as Dr. Szekely got his license, at which time Dr. Szekely would take over his practice.

Q. When you left on your vacation on August 6th you left two doctors in your office. Dr. Grier and Dr. Szekely?

A. I left two doctors, but Dr. Szekely had come in a week before I left so he would become totally acquainted with all the patients in my office, learn the procedures of the office, learn the methods of treatment and how to set a fee, because it is our custom in the office and is today, that a nurse never sets a fee in our office. The doctor is [fol. 344] the sole person who decides what a person should pay upon a visit or treatment, so far as the charge to the patient. So that Dr. Szekely was taught—I never had a chance to speak to Dr. Grier—the code of "Dick Murphy" A fee of fifteen dollars, "DM" would be written on the card. This was explained to Dr. Szekely and he got to know the patients and I wanted the patients to feel before I came back, they were not total strangers to the doctor and he was familiar with the case and they would feel perfectly at home coming into the office.

Q. Now, Doctor, does it take a little longer to get a narcotic stamp from the Federal Government after you have once been admitted to practice?

A. Yes. After being admitted to practice you then must first apply for your narcotic stamp, and a narcotic stamp sometimes takes a month and sometimes two or three, until it comes through. I think Mr. Rudd may be able to testify as to that.

Q. If Dr. Szekely had gotten his medical license from the State of Florida to practice medicine, Dr. Grier, would he leave the business and let Dr. Szekely take over?

A. That is correct.

Q. But then there would be a period thereafter when Dr. Szekely, although licensed as a physician to practice in Florida, would not have his Federal narcotic stamp. Is [fol. 345] that correct?

A. That is correct.

Q. Now, to take care of that situation what did you do about writing some prescriptions in advance for your patients that you knew would need such narcotic prescriptions during your absence?

A. I think the jury has already heard that most of the patients I had been treating, of course, I treat about ten thousand patients a year or more; but of those ten thousand there are eight people involved here who I have been treating for many years. There were one or two I had been treating for a very short time before I left, but most of them had been under my care for years, and they were getting non-addictable narcotics that you have heard about—Codeine, Demerol and Methadon, and on leaving I prepared those prescriptions which I understood previously from a Mr. Johnson, the State narcotic officer, that it was perfectly all right to provide prescriptions for your patients. If you are going on a vacation to write on the prescription the date that you signed the prescription, and you could authorize your clerk or your nurse or any agent to go ahead and write the dates on the top of the prescription and the words, "To be filled," and after that, the date the patient received the prescription—those prescriptions were left with Dr. Szekely and not with the nurses, as has been [fol. 346] testified. There was nothing left with the nurses

at any time, and there were never any instructions given to the nurses in regard to fees, because, as stated, the doctor would examine the patient each and every time, and then designate whether the patient should receive a prescription at that particular time. If he thought the patient would need it, he issued it. And if he thought the patient didn't need it, he would not issue it. And this Doctor was not a little pin brain out of school; he is forty-four years of age and knows how to conduct a practice. So that these prescriptions were left with Dr. Szekely, not with the nurses. And when I left them with Dr. Szekely, of course, Miss Rossman, as you heard, was there. I had been writing the names of the patients on the prescriptions all that morning. I came in very early and I must have written about two hundred prescriptions for the Bruches and other patients, and I was just about exhausted, and I said, "Will you please sit down, Miss Rossman, right next to me and put against each and every prescription the words, "To be filled". "I will write a few and you do as many as you can," which Miss Rossman did. Now at that time the question arose that Dr. Szekely and Miss Fredericks were nowhere in the vicinity when this happened. She said she received instructions. Dr. Szekely said, "Well, now, if you prepare these prescriptions they are for narcotics. Even if they are mild they are still narcotics. What shall we do [fol. 347] with them?" I said, "Lock them in the drawer." I had this metal furniture in this office, and the only drawer in the entire office was the cash drawer in the nurse's desk in the front reception room, and I might add, that besides the cash, we also kept injectable narcotics in that drawer, because we wanted to keep them under lock and key. Dr. Szekely said, "What will I do?" I said, "Put them in the cash drawer, and when you need them and determine a patient needs them, ask the nurse to bring a prescription in to you and issue it to the patient—tell the nurse you are issuing a narcotic and put the date on it." Dr. Szekely agreed to do it, and as far as I know, or as far as I knew, did; and that's as far as my directions to Dr. Szekely was concerned. I never had a chance to speak to Dr. Grier about the thing. I was hoping Dr. Szekely would explain the situation to Dr. Grier if he had failed to pass the ex-

amination, so that Dr. Grier would write his own narcotic prescriptions. Dr. Grier had his own narcotic license, and the question might arise, why didn't he use that narcotic license from the first day he was there; but if I did not leave the prescriptions and Dr. Szekely got his license to practice the day after I left, Dr. Szekely would no longer be able to take care of patients who might require some for the relief of pain. Those prescriptions were prepared in advance. Dr. Szekely was also told if he did not pass the examination, Dr. Grier could write prescriptions, and [fol. 348] they could be destroyed, because there was no need for them. And this was my advice I told Dr. Szekely —that's what actually happened, and nothing else.

Q. Was Dr. Grier paid for the period that he stayed in your office?

A. He was. He received forty per cent of the first two weeks until the time when Dr. Szekely received his license, which was on the 19th of August, I believe.

Q. Dr. Grier received the forty per cent, not the hundred and twenty dollars a week guarantee?

A. No. He received a lot more than that. I have the figures in the book.

Q. Dr. Szekely—when you returned did you have a final settlement with him?

A. Yes. When I returned the practice had dwindled to practically nothing. I gave him his minimum of six hundred dollars and found that during the time I was away I had lost $688.00—lost $680.00.

Q. While I think of it, Doctor, there has been marked for identification as Defendant's Exhibit 1, this book. Will you look at it and tell me what it is?

A. I know this book backwards and forwards, and it is the daily log book for the year 1955, January 1st to December 31, 1955.

Q. When you call it the "daily log book," do you also call [fol. 349] it the daily cash book or the register of patients that come in?

A. Correct.

Q. What is the procedure in making entries in that book?

A. As I have explained, every patient that came in to the office, the patient's name would be written in the book.

Immediately the nurse would draw from the file the proper medical record card of the patient that came in and the patient would present that card or the card would be laid on the desk of the doctor before the patient came in, so he could acquaint himself before the patient came in with what was done previously and know how to handle the case in a more familiar manner. After the doctor had seen the medical record and examined the patient he would make notes as to what he did, what he gave and what he thought, and put down the amount on the medical record what the charge should be for the patient. The patient then leaving the doctor's consultation room, would go to the front reception desk with the card with the fee on the card and the nurse would know then how to charge the patient.

Q. And would enter it accordingly?

A. Would enter it properly in the book.

Q. The records in that book were made from day to day as each day went along; is that correct?

A. This is the daily record, and the nurses made their [fol. 350] entries from the first to the last.

Q. Doctor, I think you testified that you know that book by heart.

A. I do.

Q. Outside of the period between August 6th and September 22nd or 23rd when you returned, is there any entry in there for Fidele Garcia for more than ten dollars?

A. Positively not.

Q. Did you at any time ever give him more than one prescription at a time?

A. No, sir. If I had given him more than one prescription, those prescriptions would be filled at the drugstore, and Mr. Rudd could quickly identify more than one prescription given in the past or in the future or at any other time.

Mr. Roberts: We offer this.

Mr. Cline: No objection.

The Court: It will be admitted.

(Thereupon, the instrument was marked in evidence as Defendant Needelman's Exhibit 1.)

By Mr. Roberts:

Q. Now I hand you an envelope with some cards inside of it, marked Defendant's Exhibit 3 for identification. I am not interested in the envelope, but I will ask you if [fol. 351] these cards, what these cards are that are inside the envelope?

A. This is one of the medical records taken from my office and the record of the patient, Fidele Garcia. He, in 1953 was twenty-six years of age.

Q. Now, when a person first comes in do you start a card like that?

A. We usually do.

Q. And every time he makes a visit—

A. We make an entry onto the card as to what we saw, what we did for the patient, and the fee for the patient.

Q. Now, where are these medical cards kept?

A. These medical records are kept in the front reception room behind the nurse's desk where she may easily reach for them when the patient comes into the office and brings them to the doctor.

Q. Using something specific: Suppose Fidele Garcia came in to see you. What would the nurse do the first thing, as far as this is concerned?

A. She would remove it from the file and bring it to the doctor's office so the doctor can know how many patients are waiting and who the patients are and perhaps refresh his memory as to what was done last.

Q. And the patient would eventually get into your office for examination and consultation; is that correct?

[fol. 352] A. Correct.

Q. And then after you had finished examining and prescribing or treating the patient, then what would happen to the card of the patient?

A. Well, after examining the patient the fee is put on and it is given to the patient who brings it out to the nurse's desk and she marks the fee either "Paid" or "Charge" on the daily book.

Q. That is the medical history of Fidele Garcia; is that correct?

A. That's correct.

Q. Is that from the time he first came to your office until August 6th?

A. Yes, sir.

Q. Do you know if any cards are made for him from August 6th on, any entries or anything?

A. I remember seeing the cards when I came back from my vacation, that I remember having furnished to show to Mr. Rudd with the consultations up to date; but since that time all the cards since August 6th have disappeared with the exception, I believe, of Renne Pollack, Harvey Sachs and Gerald Miller.

Q. But that is Fidele Garcia's medical history?

A. Yes.

Q. From what date?

[fol. 353] A. From December, '53 to August 5, 1955, a period of about two years.

Mr. Roberts: We would like to offer this in evidence.

Mr. Cline: No objection.

The Court: It will be admitted.

(Thereupon the instrument was marked in evidence as Defendant Needelman's Exhibit 3.)

By Mr. Roberts:

Q. Now, Doctor, handing you this exhibit the medical cards of Fidele Garcia, I want you to refresh your mind and tell the jury what Fidele Garcia's medical history and complaint was and what treatment you would give him from time to time.

A. Mr. Garcia's complaint, upon coming in in 1953, was pain in the left anterior chest, and pain between the fifth and sixth left ribs where it met the breastbone. And he complained of pain symptoms upon taking a deep breath and bending or moving suddenly, or when the weather changed. Pressure on this area would cause definite pain and cause the patient these symptoms. You would have a patient turn his head the other way and the patient would not have the symptoms, or if your patient was trying to [fol. 354] fool you, it is pretty had to tell. But when you put your finger on the chest, the exact point where the

patient is paining, we convinced ourselves he did have definite pain where the fifth and sixth left ribs came together with the sternum. And he stated he had been in an accident, and automobile accident, in January, 1952 when he stated his ribs were fractured and that many X-rays had been taken by a doctor, by a number of doctors, and that he was treated by two doctors at that time, which we found out since were Dr. Vogt who is a competent orthopedic specialist. I treated this man in 1953 by putting procaine or novocaine into the area and the places and strapping his ribs, hoping to give him some relief of pain. We weren't very successful at that time, but we did offer some medication to stop his pain which was Methadon. And I further stated that in 1953 there was a lot of literature in the medical journals—I have copies of that—that Methadon given orally was a marvelous drug to stop pain, and had little euphoria. In other words, there would be no kick to it. It was strictly a drug to stop pain and an analgesic agent. We prescribed Methadon at this time for his pain. That was in December, 1953. Then I did not see Mr. Garcia for eight months until August, 1954, when he came in with a similar complaint and since I had not seen him in eight months and he said he had gotten some relief from the last treatment, I again injected procaine into [fol. 355] the arm and strapped him up again, and gave him some diathermy, and this seemed to do very nicely.

Next, I didn't see him from August until November, 1954, which would be three months later, November 10, 1954. He came with the same complaint and I repeated the same treatment, feeling if I could hold the man comfortable for three or four months at a time I was doing good. I gave him similar treatment on November 10th and saw him again on the 30th, which was three weeks later, and he complained of this pain, and I said, "We had better take another X-ray." Take another X-ray to see why his pain had not been relieved with the injections as it had been in the past. Of course, Mr. Garcia at that time refused X-rays and stated that it was all right, he knew what he had: he had these fractured ribs, and as far as he was concerned, he was told by other doctors that there

was some scarring and it would not heal, and perhaps an open operation would help it, and he wasn't in the mood to have anyone open his chest and operate on him at that time. So we treated him on November 30, 1954 and didn't see him again for almost a month until December 28, 1954, at which time we again did the same thing and put in some procaine and strapped him and again suggested X-rays which he refused.

From December 1954, we didn't see him until February 15, 1955, which was about two months later. And after that, on March 11, 1955—from December, 1954 we didn't see him until February, 1955. And then February 15 to [fol. 356] March 11, which was one month after that.

Again I repeated the same treatment. He came in on March 18th, a week later, and March 25th, a week later. I repeated the treatment at that time and then we didn't see him again until April 18, 1955 which was about twenty-four days later, three and a half weeks later. On April 18th, 1955 it occurred to me that perhaps I might try to reduce the infection in the area by giving him some Cortisone drug which we did, and we thought we would give him, put him on Codeine instead of Methadon. The patient told me Codeine upset him and made him sick and nauseous. The Methadon seemed to agree with him, so we kept him on Methadon again.

Q. Is Codeine stronger or weaker than Methadon, or are they about the same?

A. Some people get more relief of pain with Codeine than they do Methadon.

Q. It depends on the individual?

A. Yes. After May 22nd we saw the patient again twenty-two days later, on June 13, 1955, at which time he again had some severe pain, and we gave him similar treatment on June 13th and he came in on June 18th again with a similar pain and we gave him more Aquadiol. This was the first time I had seen him in such a close period. Then it seems he came in two days later and complained of an acute pain across his chest which was aggravated by taking a deep breath or deep breathing, and [fol. 357] I couldn't understand that. But he was running a temperature of 99.6. Some dormant infections are quite

high, and when that happens on top of a broken bone or arthritis, the condition will flare up and the patient will have more pain at that particular time. On June 20th he seemed to have more pain than ever before and we started with Antibiotics to stop his pain. I gave him Penicillin at that time. We saw him again on June 24 for the complaint of his pain, and we gave him some more Antibiotics and I had a new machine. Ultisonic so-called wave therapy, which is used to relieve pain and reduce swelling. By sound waves and actually by applying sound waves, you can reduce a painful condition. We started using the Ultisonic June 27, 28 and July 2nd, 1955. At that time it seemed we were not getting anywhere. His pain was getting more intense rather than getting better, and finally on July 6th, his temperature, in spite of the Penicillin which I gave him, had sprung up to 100.2 and he developed pleurisy in his chest. We changed our antibiotics at that time to see if he would not respond better to something other than Penicillin. We saw him on July 6th, 12th, 15th, 17th, 18th, 20th, 23rd, 25th and 27th and each time we gave him Ultisonic. We thought perhaps the only thing to do now was to have some open surgery to see what was interfering. Perhaps there was some scar tissue in the area of the sternum, and perhaps if that was removed he would heal once and for all. And the patient said [fol. 358] he didn't want to go to surgery at this particular time.

On the 27th we had him come down, the 28th, 29th and 30th, and he had been almost every day receiving treatment, Ultisonic and whatever I thought I could do to treat him to relieve his pain and help his pain—Aquadiol, and during that last week he was seen every day also by Dr. Szekely, who watched with me and agreed with me on the type of treatment I was giving and thought it was the thing to do, and that brought us up to August 5th, 1955.

Q. What is Aquadiol?

A. That is a Cortisone-like drug, which is used for people with rheumatic pain, neuritis, inflammatory conditions in the body. Aquadiol is injectable.

Q. That is not a narcotic?

A. No.

Q. He would need diathermy also?

A. Yes, Ulti-sonic.

Q. Diathermy is what?

A. Deep heat which also helps inflammatory tissue by taking it away. We take pressure off nerves and that way you relieve pain.

Q. And the Ulti-sonic?

A. It is the same thing, except it works by sound waves, and is supposed to be more effective than diathermy.

Q. He was given all of these treatments up until the time you left on your vacation; is that correct?

[fol. 359] A. Yes.

Q. While you have that in your hand, you said something about a code, Dick Murphy. That has ten letters in it. Is that correct?

A. That's right. The D stands for 1, and the I stands for 2, and the C for 3 and so on.

Q. Does that card show a code after each visit?

A. It certainly does. After each and every visit, in my own handwriting.

Q. That is where?

A. "DY" on August 3, 1955. All code marks were put in by the doctor after examining the patient. All these made by the doctor.

Q. Then the patient would take that to the young lady in the outer office and pay her?

A. Or charge.

Q. And she would run it on the book?

A. That is correct.

Q. Have you endeavored to find out who may have examined or treated Fidele Garcia prior to the time he came to see you?

A. Yes. He was examined by Dr. Vogt and Roy.

Q. Do you know if either of those two doctors are alive?

A. They are both dead. I had hoped to have them and testify with Fidele Garcia, but I found out both of them [fol. 360] had died within the last two years.

Q. Do you have in your possession a written report of Dr. Vogt as to his findings on Fidele Garcia after this automobile accident?

A. I certainly do.

Q. And to whom was that report made?

A. This report was made to Crawford & Company, adjusters for an insurance company, at Biscayne Boulevard, Miami, Florida.

Mr. Roberts: This lengthy report I will read, but to save time—

Mr. Cline: Objection, your Honor. Strictly hearsay.

The Court: Sustained.

By Mr. Roberts:

Q. Where did you get this?

A. I received this letter from the attorney who settled the case for Garcia and he informed me Garcia had received fifteen hundred dollars in settlement for his injuries, in addition to all of his medical bills being paid.

Q. Did you know, or do you know what branch of medicine Dr. Vogt specialized in?

A. Dr. Vogt was an orthopedic specialist just as Dr. Abrashkin is.

Q. A bone specialist?

[fol. 361] A. Bone and joint specialist.

Mr. Roberts: We offer in evidence the letter identified by the witness as the report of Dr. Vogt on Fidele Garcia's condition.

Mr. Cline: Objection, your Honor.

The Court: Objection sustained.

By Mr. Roberts:

Q. I hand you now what has been marked for identification as Defendant's Exhibit 9 and ask you to tell me what that is.

A. This is a card on Gerald Miller residing at 1318 Euclid Avenue, age twenty-seven, dated July 29, 1955.

Q. Is that your medical history of Gerald Miller?

A. That is my medical history.

Q. And a part of your record. Is that correct?

A. That is correct, the same as all the other records in this case.

Mr. Roberts: We offer it in evidence.

Mr. Cline: No objection.

The Court: It will be admitted.

[fol. 362] (Thereupon the exhibit was marked in evidence as Defendant Needelman's Exhibit 9.)

Q. Will you tell us what his complaint was and what was your course of treatment?

A. Mr. Miller came in with an infected running cyst on his right ear lobe and requested that perhaps I remove this thing for him on his visit, which I did. I removed the cyst and put in two sutures and gave him Penicillin so there would be no future infection, and he gave me a history of having rheumatoid arthritis of the spine.

Q. What is that?

A. An inflammation condition of the spine which is associated with pain inflammation anywhere in the body—sometimes it will settle in a joint and give a patient pain for the rest of his life, particularly with weather changes. He can tell you when it is going to change, because of the pain in the joints. Such was the condition of this young man, Gerald Miller whom we examined. On examination of this patient, Gerald Miller, we had him disrobe and examined his spine and again we found tenderness and spasm of the muscles along the spine all the way up and down his spine. The entire spine seemed to be involved, and he told me at that time he had been going to a doctor in the southwest section of Miami and he had left and the [fol. 363] doctor had given him many injections of Aquadiol and given him many prescriptions for Cortisone and that this had never relieved him, and he, himself, told me that the only thing that the doctor would prescribe for him to be of any use would be Methadon tablets, also he had been given prescriptions for Codeine and for Methadon. He told me he had not taken anything like that, but Methadon tablets would stop his pain, and would I agree to take over, since he had just moved to 1318 Euclid Avenue. I told him I was going on vacation, but I was leaving another doctor in the office who would be glad to follow along with this case and treat him accordingly, and I introduced him to Dr. Szekely and Dr. Szekely said he would be de-

lighted to go ahead and treat this patient. The patient came in on July 29th and we removed the thing from his ear with surgery and after determining he was having pain, prescribed Methadon tablets, and to return three days later on August 2nd at which time we changed the dressing on his ear. He said he had used the Methadon tablets and had taken as many as eight a day and we suggested, to see if it would ease him, suggested Aquadiol, and he said he didn't think it would help, but we gave it to him.

On August 5th we removed the sutures from his ear and the ear was festering and we gave him some penicillin and gave him another prescription for Methadon. That was August 4th we changed the dressing. On August 3rd we [fol. 364] removed the sutures. He came in on August 4th and 5th when the wound was healing, and this was the last time I saw him before leaving, and we gave him another injection of Aquadiol, and we asked him about who the doctor was who was treating him, and he said, well, he couldn't recall offhand, but he was a doctor in the southwest section, and he couldn't think of the name. I said that if he did we can get a letter from the other doctor as to what he found and get a report of the X-ray findings or anything else he might have, and with that I left, and that was the last time I saw Gerald Miller.

Q. Did he continue to go to your office during your absence?

A. He did.

Q. What does your record indicate as to the visits that he made to your office during your absence, and what was done for him?

A. The records indicate to me that he was seen and given diathermy each time and given a prescription for Methadon each time he came in.

Q. How long does it take for a diathermy treatment?

A. Twenty minutes.

Q. That is putting them under a lamp, in layman's language more or less?

A. That's right.

Q. The office assistant can do that?

[fol. 365] A. Yes, she can do that. I would assume,

though, that the doctor saw the patient each time before he sent him back for his diathermy.

Q. That card likewise has the initials, "DY" as to the fee that was charged?

A. That is correct.

Q. I hand you what has been filed for identification as Defendant's Exhibit 6, and ask you to tell me what that is.

A. This is the office record of Alice Buononito who we saw for the first time on July 16, 1955. Her complaint at that time was severe pain in the right lower quadrant. Examination showed a temperature of 100.6, 96 pulse; respiration, 26 and urine that was passed was loaded with pus cells.

Q. This is one of your medical records which you kept in your office?

A. Yes.

Mr. Roberts: We offer this in evidence.

Mr. Cline: No objection.

The Court: It will be admitted.

(Thereupon, the Exhibit was marked in evidence as Defendant Needelman's Exhibit 6.)

[fol. 366] By Mr. Roberts:

Q. Now you may testify from that as you did with the others and tell what was done in your office for Alice Buononito and what condition she was in.

A. At this time we examined her, her temperature was 100.6 and she had a pelvic examination and we found that the right tube of the ovary was markedly swollen, inflamed and extremely tender to the touch. Further, we determined that adhesions within the abdominal wall and movement inside would elicit severe spasm in the abdominal muscles. She was given Penicillin, 601,000 units, and told to douche with hot vinegar douches, and was offered Codeine tablets for relief of pain, which she stated did not agree with her. So I therefore suggested that perhaps Methadon would relieve her pain, and prescribed Methadon for this lady. That was July 16th. She returned ten days later and she still had a lot of pain, and we gave her more Penicillin and

suggested again hot douches and tried some diathermy on her right lower quadrant. That was the 16th and on the 26th, and then she came in the following day, still complaining of pain, at which time we gave her more Penicillin and diathermy and she returned three days later, at which time I suggested perhaps she might have some surgery and have the tube of the ovary removed, since it looked to me like this thing would go on indefinitely. She refused surgery and stated she couldn't take time out. She had a [fol. 367] young baby and financially she wasn't in too good a shape at this time to put herself into the hospital for surgery.

So she returned again three days later on August 2nd and at this time, besides Penicillin, we again tried to give her Aquadiol, this Cortisone-like drug which we hoped would reduce the inflammation within her pelvis, and perhaps make her more comfortable.

Q. This is the same lady that Dr. Newman testified about today. Is that correct?

A. Yes. On August 5th she returned and the pain didn't seem to respond to Aquadiol and Penicillin, and I called Dr. Pena, who has been my character witness. He, as you heard, delivered both my babies and Mr. Roberts' and a few thousand other babies in Greater Miami. He was head of the Gynecology of Jackson Memorial and Mercy Hospitals. I asked him for his suggestions as to what I could do for this girl, on the telephone, and he said if these things didn't work to try some Jacobson's Solution, which is injectable, and used in chronic inflammatory diseases. I went out at that time to get a preparation of Jacobson's Solution to give an injection test, and showed this to Dr. Szekely who was going to treat her during my absence, and she was getting these things, and if he wanted to, he could continue to treat her. He would be the doctor in the office, and I left at that time and Dr. Szekely was familiar with [fol. 368] this patient also at the time I left.

Q. He likewise has to get a fee on these visits?

A. Correct.

Q. By the way, Doctor, do you know where Gerald Miller is at the present time?

A. Yes, I do.

Q. Where is he?

A. He is in New York at the present time.

Q. Have you tried to locate some doctor who treated him either before or after he was your patient in your office?

A. I have tried very hard, indeed, to locate the doctor who treated him before and after he was in my office.

Q. What have you done in order to try and locate him?

A. I have searched almost every drugstore in Greater Miami for prescriptions for Gerald Miller, hoping to find the doctor who treated him, so that I could at this time substantiate or prove that the patient had a condition which I found he had and which he stated he had, and I could find no prescription in Greater Miami for Gerald Miller.

Q. So, therefore, you could find no doctor?

A. I could find no doctor.

Q. To get a lead on Gerald Miller?

A. No.

[fol. 369] Q. There has been some testimony in here about Abe Bruches leaving some money at the drugstore for you. Will you clarify that, please?

A. I think it was testified to the jury that any moneys left were in payment of an old bill accumulated for the last two years. I asked him to make every effort to pay the thing, and he said to me, "Well, every time I go into your office and there is a lot of people there, they keep me waiting an hour [illegible] they will take my business." And he said, "I have to run to the barbershop and run back again, and I cannot go in there and wait. When you are there you understand my position and you take me in right away and treat me and get me out, but I cannot go into that place, because a similar thing happened the year before." That I had been on vacation the year before and he had been kept waiting for an hour, and this was disastrous, and I suggested perhaps he could make a little effort to pay the bill by leaving some money at the drugstore and they would keep a little separate file of whatever he paid and in return, I would ask Dr. Szekely, which I did, to do me a favor, since this man was not too well off financially, to treat him without charge while I was away. He came in fifteen times during the period and was given injections

of Penicillin and B-12 and properly examined by Dr. Szekely each time without charge.

[fol. 370] Q. And the money that he left at the Medical Arts Pharmacy was strictly in payment of a prior obligation?

A. Strictly in payment of a bill, nothing else. Mr. Rudd could have determined that by speaking to the Bruches before he caused this whole situation.

Q. Do you consider any of those patients narcotic addicts?

A. I certainly do not. And certainly never told Mr. Rudd that they were addicts, and he knows it.

Q. Would you give us your version of what transpired that day in your office when Mr. Rudd came in there?

A. First let me say that I had no idea in the world that Mr. Rudd was investigating me at all in any possible narcotic violation. Mr. Rudd came in and identified himself as he said, and said "There has been some irregularities while I was away," and he was checking into some of these prescriptions and the impression that Mr. Rudd gave me is that someone had been forging my name to prescriptions or perhaps my nurses had been doing something about prescriptions that I didn't know about. I was most anxious to help Mr. Rudd in every way, and I said, "I don't know what this is all about, but I will be happy to help you in any way. I can clarify anything you are looking into." He said, "Bring out your day book." First Mr. Rudd said to me, "Do you have any prescriptions left of the patients who were here during the summertime?" I said, "You mean unused prescriptions?" And he said, "Yes." You may [fol. 371] recall, on the unfilled prescriptions, he had just come from the drugstore where he had heard there were unused prescriptions, and he asked me for them. I said, "I have some which were not filled which I have in the drawer, of Mr. Garcia and the Bruches, which were returned from the drugstore." He said, "Could I see them," and I said, "Surely". Then he said to me, "Well, now, are these patients addicts?" and I said, "Certainly not." He said, "Well, if they are not addicts, how do you know?" I said, "Mr. Rudd, I have a complete history, the complete histories of every patient I ever treated here. Let me get my medical cards and show you the letters from the doc-

tors and letters from hospitals on these patients, and you convince yourself." He said, "Get the records." I got the records. He denied seeing the records at this trial, but he saw the records at the last trial. I brought out the records and showed them. He took a quick glance and said, "Let me see your day book." He said, "We would like to determine the number of prescriptions issued." He said, "What does this $20.00 mean?" I said, "That means that this person, Fidele Garcia, paid $20.00 and got two prescriptions." He said, "Two prescriptions?" I said, "Yes". I spoke to Dr. Szekely on the telephone—that was Wednesday—and he told me he had written prescriptions more than one prescription to a patient, and I told Dr. Szekely it was not right. He could be hung for a thing like that. And I explained to Mr. Rudd that the twenty dollars for [fol. 372] the two prescriptions had been explained to me by Dr. Szekely the day before. So then Mr. Rudd said to me, "Well, now, do these people have an incurable disease?" I said, "They have incurable diseases and have chronic diseases." I said, "You can see from the records." We would give these drugs to relieve pain or to make them comfortable. I said, "They have pain. They are not addicts. They have pain." He said, "If you give these people something to relieve their pain, don't you make them comfortable?" I said, "I suppose if you relieve the pain you make them comfortable." He said, "Let me read you something." And he pulled a book out and he reads from the book, it is illegal to prescribe medication for the relief of craving of an addict or to give a patient comfort. I said, "Mr. Rudd, you said it was for comfort. I said it was for pain." Mr. Waters says he doesn't remember any discussion about pain or comfort. Mr. Waters said what he read in Mr. Rudd's prepared notes which were recently prepared, and his written notes, but he failed to bring in that which we would like to see; and he doesn't try to bring it in here.

Mr. Cline: I move to strike every word of that alleged testimony.

The Court: The motion will be granted as respects to the arguments part.

[fol. 373] By Mr. Roberts:

Q. Did you at any time issue the prescriptions to any of these patients solely for the purpose of satisfying their craving for narcoti drugs?

A. Never.

Q. On every occasion when you issued the prescriptions for these patients, was it always, to alleviate pain and suffering that they had at that time?

A. Always.

Q. Were you satisfied in your own mind and in your heart that you issued prescriptions for these patients—when you issued these prescriptions for these patients, that that was the proper thing for a physician to do under the circumstances?

A. Absolutely.

Mr. Roberts: That's all.

(Thereupon, the hearing was adjourned until 1:45 P.M. of the same day, at which time, the following proceedings were had.)

Cross examination.

By Mr. Cline:

Q. Doctor, how long have you known Mr. Kipnis who testified on your behalf this morning?

A. About seven years.

Q. I understood from you or him one to say seventeen [fol. 374] years, or something to that effect?

A. That was Dr. Pena.

Q. I understood it was Mr. Kipnis?

A. No.

Q. Where is Middlesex University?

A. It no longer exists.

Q. Where was it?

A. Massachusetts, in 1938.

Q. I think you said you were in the Army three years and nine months?

A. Yes.

Q. Was that a voluntary enlistment or were you drafted?

A. It was a voluntary enlistment.

Q. When did you go in?

A. I went in on August 26, 1942.

Q. No one asked you to? You just volunteered?

A. No one asked me to; I volunteered. May I say that I volunteered much earlier to go into the Navy. As a matter of fact, on December 7th when war broke out, which was a Sunday, on December 8th I applied for a Commission in the Navy and was examined by a Navy Medical Doctor who at that time told me my application would be considered, and a short time after that it was denied because they said I was five feet, four inches, and I was too short to be an officer in the Navy, because at that time a Naval Officer had to be five feet, six inches tall. That was [fol. 375] the standing regulation, and I still have the letter from the Navy.

Q. Now, I believe you went on your vacation in 1955 about the 6th of August; is that correct?

A. 6th of August.

Q. And at that time you left both Dr. Grier and Dr. Szekely in your office?

A. That is correct.

Q. Now, how long had you been treating Fidele Garcia?

A. As I have testified before, since 1943.

Q. Since 1943.

A. That is correct. I beg your pardon. 1953.

Q. How about Alice Buononito?

A. Again, that is on my card.

Q. Just as best as you recall.

A. May I refer to my records of Alice Buononito and I will tell you that.

Q. Now, as to Alice Buononito, your Exhibit 6 would indicate that you started treating her just a matter of about two weeks before you went on vacation.

A. No. As a matter of fact, I treated her in 1952.

Q. I am calling attention to the card. What is the first date on this card?

A. July 16 1955. That is twenty-one days before I went on vacation.

[fol. 376] Q. Thank you very much. That is three weeks instead of two. How about Fidele Garcia? The first date on this card says December, 1953. That would be right; is that correct?

A. Correct.

Q. And Gerald Miller?

A. July 29th. Just about nine days before I went on vacation.

Q. How long do you feel it takes you in treating a patient to become very familiar with their illnesses and the type of treatment that they require?

A. I think I can pretty quickly at the first visit determine fairly well what is going on with a patient, his physical condition.

Q. In your course of practice over a period of years, have you come in contact with many narcotic addicts?

A. I have come in contact with one narcotic addict by the name of John Klingo and I called the Narcotics Bureau and informed them of this patient and that was in 1952.

Q. That is the only narcotic addict you ever came in contact with?

A. That I treated as an addict and reported to the Narcotic Bureau.

Q. Do you know where Gerald Miller is today?

A. I did. I don't know where he is today. I knew where he was about two weeks ago.

Q. Do you know, or did you know, that he was arrested at Miami Beach a few years before you treated him, for peddling marijuana?

A. I knew nothing of any patient being arrested or being in any narcotics hospital at the time I treated them.

Q. Do you know where Fidele Garcia is?

A. I do.

Q. Where is he?

A. He is working for the Rainbow Press today, 29th Street and Miami Avenue.

Q. Do you know how long he has been in a Federal penitentiary for narcotic violations?

A. I have no idea, and I had no idea of anything at the time I treated him, either.

Q. If I told you that he was convicted here on the same spot three months after you treated him, would it surprise you?

A. If I told you a man came to me with a broken leg and was a narcotic addict, would you expect me not to treat him for his pain?

Mr. Cline: No, sir, not in any way, shape or form.

By Mr. Cline:

Q. I believe you testified that at the time you left on your vacation Dr. Szekely was not admitted to practice here in Florida; is that right?

A. That is correct.

Q. He became admitted while you were gone?

[fol. 378] A. That is correct.

Q. And any and all narcotics prescriptions that were issued through your office during the period August 6th to September 22nd would have been issued under his direction. Is that correct? Or Dr. Grier's?

A. Were to be issued by himself after examining the patient and deciding that in his opinion they needed the prescription.

Q. Dr. Szekely or Dr. Grier, is that correct?

A. As far as Dr. Grier, no. He was just to stay there in a supervisory capacity because he had a license to practice. Dr. Szekely was the man who had spent the week before and had become acquainted with the patients, and he was to treat the patients under Dr. Grier's supervision.

Q. Dr. Grier was not to have charge of issuing any of these so-called prescriptions?

A. He was to issue his own prescriptions at such time as Dr. Szekely did not have his license to practice, or had failed to pass the examination.

Q. I assume you have been through this group of so-called prescriptions pretty much in detail.

A. I think they are real prescriptions.

Q. Would these have been issued in the same number and with the same frequency had you been in town instead of in Europe?

A. If I were there and examined a patient at that time and found they had the pathology they had I would have [fol. 379] probably issued the same number, or perhaps less. I don't know. I wasn't there.

Q. The frequency with which they were issued during the period you were gone depended on their examination; is that right?

A. The frequency with which some of these prescriptions were issued were a lot more than the prescriptions I had issued during the time I had seen the patients.

Q. Do you know how many prescriptions you issued to Fidele Garcia?

A. Approximately forty which was to cover a ten week period maximum.

Q. Do you recall how many you issued between the 1st and the 6th of August, in this list, in this group of one hundred thirty-eight?

A. I think if you will refer to the day book you will get an idea of what was issued to Fidele Garcia during the week before I left.

Q. Suppose you do that for me.

A. You might look through the entire year.

Q. Let us start with the 1st of August and go to the 6th of August and see what your books indicate for the period of 1st of August through the 6th of August, 1955.

A. Fidele Garcia, August 1st. That would be one. Fidele Garcia, August 2nd; Fidele Garcia, August 3rd.

Q. He came every day, didn't he?

[fol. 380] A. I don't know yet. We will see. Fidele Garcia, August 4th; Fidele Garcia, August 5th. That is all that I issued. I did not issue any on the 6th. On the 6th he was issued two prescriptions by Dr. Szekely.

Mr. Cline: Please mark this for identification.

(Thereupon the instrument was marked for identification as Government's Exhibit 143.)

By Mr. Cline:

Q. I show you Government's Exhibit 143 for identification and ask you if these documents bear your signature?

A. I see prescriptions here, August 3rd, August 4th, August 5th, two on the 5th, the 6th I didn't issue. The 1st and 2nd you don't have here, that was issued. I see two prescriptions on the 5th.

Q. Do these bear your signature?

A. Yes, they do.

Q. Tell us whether they appear to have been filled, Doctor?

A. Let's look closer at this thing.

Mr. Cline: Take all the time you want.

The Witness: One was filled on August 5th and one was filled on August 7th, Medical Arts Drugstore.

[fol. 381] Q. How about the other one. What dates were those filled?

A. August 3rd and 4th. I am not giving the 6th. That I didn't issue. There is something very irregular here. Never issued this man two prescriptions at any time in my entire practice.

Q. Is that your signature?

A. Yes, but there is something wrong here, but we will find out pretty soon just what it is.

Mr. Cline: Fine, fine.

The Witness: The stamped signature on August 6th looks very peculiar. Are we quite sure this is—it says August 5th.

Q. I don't know. You tell me.

A. Well, we have seen a single entry of ten dollars on August 5th for Fidele Garcia, so that the patient was charged ten dollars for a visit.

Q. Well, the fact that he was charged ten dollars for a visit doesn't mean he would have been given two prescriptions does it?

A. He would not have been given two prescriptions by me, at least not consciously.

Q. Well, I will ask you this: Does the fee that a person pays a doctor necessarily determine the number of prescriptions that the doctor gives?

[fol. 382] A. Not at all. Not at all. But I am trying to still look at this thing and try to figure out just how this came about.

Q. All right. Whenever you have an answer, you come up with it.

A. I don't think the druggist would falsify anything here.

Q. If I told you that these prescriptions were picked up at the same time as these other one hundred thirty-eight, would you have any reason to doubt that?

A. No, I don't doubt that. I will tell you, I think I can explain this thing.

Q. All right. Go ahead.

A. It is possible, I don't say it happened, but I think it is possible.

Q. Are you going to testify to facts?

A. I am going to tell you what I think. I am going to try to explain these things and see if it isn't possible. I remember about two weeks ago a patient coming to my office who I examined very thoroughly for a cold.

Q. We are interested in August and September, 1955.

A. We will get back to this. At that time, after examining this little lady, I wrote her a prescription for some cough syrup and sent her back into the treatment room to receive an injection of Penicillin, and after she received her treatment she came back to me and I started to write her a second prescription for cough syrup, and at that time [fol. 383] she said to me, "Why Doctor, you have already given me a prescription," and I tore it up. There is a possibility here that I might have written one prescription and Fidele Garcia went back and got his treatment and got his diathermy and after twenty-five minutes returned to me and I unconsciously wrote a second prescription for him, not realizing I had written him one prescription, and he evidently picked up the second prescription and walked out.

Q. Being an addict, he probably did that, didn't he?

A. I didn't say he is an addict, but I just did not issue two prescriptions to him at any time. You can take this book and go to the drugstore in Greater Miami and see it is so.

Q. I don't see—I don't think your cash book is going to tell us how many prescriptions you issued, is it?

A. No. But you can check the cash book against every prescription in Greater Miami and see there are no prescriptions issued for more than what is in this cash book.

Q. Do you know how many prescriptions of these one hundred and thirty-eight were issued to Garcia?

A. I imagine in the vicinity of forty. I don't know. You can count them.

Q. So that actually the frequency here is no greater than the frequency before you left the office; is that right?

A. The frequency there would be less than when I left the office, less than one a day.

[fol. 384] Q. But before you left it was one a day; is that correct?

A. It was only one a day the last week.

Q. It was one a day while you were in the office.

A. No, sir, it was one a day the last week, not while I was in the office. You have heard me testify that Fidele Garcia came in sometimes a month apart.

Q. How about Gerald Miller? How often did you furnish prescriptions to him for narcotics?

A. I don't remember, because he was one of the recent patients that came in about seven to nine days before I went on my vacation. That is one man I never had a chance to check further into and get a list of the doctors he was supposed to have gone to and what his condition was. He was the only person I have no other letter on.

Q. You say you have other letters on Garcia?

A. Yes, sir.

Q. About his addictability?

A. No, sir, not addictability; about his physical condition.

Mr. Cline: Please mark these of identification.

(Thereupon the instruments were marked for identification as Government's Exhibit 144.)

Q. I hand you Government's Exhibit 144 for identification, and ask you do your signatures appear on these?

[fol. 385] A. They do, but again on Gerald Miller I see August 6th and that probably was not issued by myself.

Q. Does it say what date it was filled?

A. August 4th and August 5th are what I issued.

Q. So two out of the three would have been issued by you?

A. Yes.

Q. The two days immediately before you left?

A. Yes.

Q. If Gerald Miller got one a day while you were gone that would be the same as he got while you were in town?

A. No, sir, he did not get one a day while I was away or before.

Q. You issued one to him on the 4th and one on the 5th.

A. He might have had excruciating pain at that time. I had just removed a cyst from his ear. He had pain in his ear and joints, as I explained to the jury, which affected him and which probably flared up his arthritis more than previously.

Q. How about Alice Buononito? What did you know about her?

A. My examination I have testified to. She was a woman with inflammatory disease and had infected tubes in her abdomen. Every time the intestinal bowel would move she would have pain. Dr. Newman testified to that also.

Q. You had been treating her three weeks before you went away?

A. She was not completely new to me. In 1952 I had [fol. 386] treated her under the name of Alice Bennett, at which time she was pregnant and she had to have her baby adopted.

Q. Do you know what Abe Bruches' profession was?

A. I had no idea. I didn't ask my patients their profession, as a rule.

Q. I show you Government's Exhibit 145 for identification and ask you if your signature appears on these documents?

A. They appear on August 5th and they appear on August 6th. I am not an attorney, but isn't this case about prescriptions which were issued on August 6th and September 22nd?

Mr. Cline: No, sir, not any more. I show you Government's Exhibit 146 for identification and ask you if your signature appears on these documents, and if they do, what dates?

A. Does this case include Abe Bruches at this time?

Mr. Cline: The Judge will rule on the law. You answer the question.

A. These are prescriptions of Abe Bruches.

Q. What are the dates, Doctor?

A. This is August 3rd, August 4th, August 5th and August 6th, on which day I probably did not see him.

Q. All right. Pull the 6th out of that group and tell me how many there are between the 1st and the 5th of August.

A. The question here as to prescriptions on August 4th. I had issued Abe Bruches forty-eight tablets at that time. [fol. 387] It has been testified that this patient received six prescriptions a week for the last seven years. He received two prescriptions for Codeine when he came into the office in addition to his regular treatment.

Q. So that what Abe Bruches got down there at Mr. Waxman's drugstore wasn't any different than what he had been getting through your office in the ordinary course of business. Is that right?

A. He received a prescription which he had been getting—these memo prescriptions—since November, 1954.

Q. Do you know when these prescriptions were made up?

A. November of 1954.

Q. Are you sure it wasn't February, 1955?

A. No, sir.

Q. If I told you I saw an invoice yesterday from Mr. Rouse of the printing company dated February, 1955, that wouldn't refresh your memory at all?

A. I am quite sure it was November, 1954. That would be three months later, which would be six months before I left. That may be so.

Mr. Cline: Please mark this for identification as Government's Exhibit 147.

(Thereupon the instruments were marked accordingly.)

[fol. 388] Q. How about Government's Exhibit 147 for identification? Do these alleged prescriptions bear your signature?

A. Yes; August 2nd, 4th and 5th. They do bear my signature.

Q. What are the dates?

A. August 2nd, 4th and 5th.

Q. So that apparently this person was getting just as much before you went away as he got after you were gone. Is that correct?

A. No, sir.

Q. What does it indicate?

A. This indicates; if you will look at the record which is in evidence, that Harvey Sachs was suffering a week or two before I left with an obstructed prostate gland. We are still treating that as well as the osteo-arthritis. He was given Methadon to stop his pain, and while he was in, he received one prescription a week for a period of seven weeks.

Q. How about Government's Exhibit 148 for identification?

A. August 1st and 2nd, twice, August 3rd, August 5th and the 6th. I didn't issue.

Q. So there is two in one day in that group?

A. Yes, for Lottie Bruches; but in her particular case she was receiving half the amount of Codeine, as a rule, that Mr. Bruches got, and also she came in less frequently than he did, and they were getting forty-eight tablets at a time when they came in, both Abe and Lottie Bruches. [fol. 389] Lottie came in less frequently than Abe.

Q. Were their illnesses exactly the same, Doctor?

A. No. Lottie had tri-facial neuralgia and pansinusitis, and we have records to prove that.

Q. Did they require exactly the same treatment?

A. Almost the same, because Abe Bruches was receiving penicillin inhalations for his illness, and Lottie Bruches was receiving penicillin inhalations for her sinus.

Q. So you used the Methadon prescription but you did write Abe on one and Lottie on one?

A. Not Abe Bruches. There was no name written on that prescription at any time.

Q. The prescriptions were for twenty-four one-grain Codeine tablets; is that correct?

A. Yes. I had that prepared that way because my own prescription for a non-addictable narcotic was twenty-four tablets at a time.

Q. Your testimony is that Codeine is non-addictable?

A. My testimony is that Codeine orally is not addictable.

I have read that in numerous text books by Walter Abbingley (?). He will tell you that Codeine taken orally is not addictable.

Q. Do you know Bernice Sachs?

A. Not personally.

Q. Do you recall her testimony at the first trial when she [fol. 390] said she was directed to receive two dollars and fifty cents for each prescription issued?

A. She was directed to receive that by no one at any time.

Q. You heard her testimony to that, didn't you?

A. That was not her testimony.

Q. You are sure of that?

A. I am quite sure. She would have no reason to say such a thing.

The Court: We are not going into the first trial testimony. Let's stay right here with this trial. She testified in this trial, didn't she?

Mr. Roberts: Yes, sir.

By Mr. Cline:

Q. When did you first get to know Mr. Rudd?

A. I have never got to know him. I still don't know him.

Q. When did you first have your conversation with Mr. Rudd?

A. My first conversation with Mr. Rudd was in 1952.

Q. Regarding what?

A. With regard to something we had a dispute about.

Mr. Roberts: I object to going back to that.

The Court: I will declare a mistrial if you don't keep within this record. We don't want to try this case over again.

[fol. 391] By Mr. Cline:

Q. How long have you known Mr. Waxman?

A. I have known Mr. Waxman since I opened my office. That would be nine and a half years.

Q. What sort of conversation did you have with Mr. Waxman when you took the Bruches' prescriptions?

A. I am glad you asked that little question, because it was testified by everyone that when we took the Bruches' prescriptions in the drugstore on August 6th that Mr. Waxman was not there, even though Mr. Rudd said he was not there. Mr. Waxman was not there on August 6th when I brought the Bruches' prescriptions to the drugstore, and I left them with Mr. Kamisarow and that was testified by Mr. Kamisarow, Bernice Sachs, and everyone else in this case except Mr. Rudd.

Q. What conversation did you have with Mr. Waxman regarding the prescriptions that you left at his drugstore?

A. None whatsoever.

Q. None at all?

A. None at all.

Q. You didn't direct him to collect two dollars and fifty cents?

A. Ridiculous.

Q. Then it is a coincidence that the number of prescriptions multiplied by two dollars and fifty cents comes to within two dollars and fifty cents of one hundred seventy-two dollars, fifty cents?

[fol. 392] A. Why didn't it come out exactly?

Q. Who set the fees in your office while you were gone?

A. Dr. Szekely set the fees, as I had set the fees, and was instructed to set the fees.

Q. You didn't instruct your two young ladies in your office what fees to collect for these prescriptions?

A. At no time.

Q. At no time?

A. At no time.

Q. You heard the two of them state that it was five or ten dollars. Are they both liars?

A. They were both named in the conspiracy.

Q. Are they both liars?

A. I am not allowed—they are not lying. They are both cooperating with Mr. Rudd.

Q. Do you think Mr. Rudd asked them to lie on that stand?

A. Well, Mr. Rudd said in the last trial that no prescriptions were picked up, that everything that was there in

the last trial were from the Medical Arts Pharmacy when he knew darn well twenty-three were picked up in one place, and—

Q. I asked you if you thought that Mr. Rudd asked them to lie in this stand?

A. I think there was some little conspiracy between he and the nurses and possibly Dr. Szekely, too.

Mr. Cline: Your witness.

[fol. 3951] Mr. Roberts: I have no further questions. The defense rests.

Mr. Cline: The Government will rest.

The Court: The jury will be excused while we discuss some legal problems.

(Thereupon the jury retired from the courtroom at which time the following proceedings were had.)

MOTION FOR JUDGMENT OF ACQUITTAL AND DENIAL THEREOF

Mr. Roberts: I have a motion, if your Honor please.

Comes now the defendant at the conclusion of all of the testimony offered in the case and moves the Court to enter a judgment of acquittal herein and for grounds therefor respectfully shows to the Court that the Government has failed to prove the material allegations contained in each and every count in the indictment upon which the defendant is being tried; and on the further ground that there has been no showing whatsoever that either Gerald Miller, Alice Buonomito or Fidele Garcia were in any need of the medicine Methadon prescribed for them on the occasions set forth in the indictment. On the further ground that there has been no showing that at the time the said patients [fol. 3952] received the prescriptions that they were narcotic addicts. On the further ground that there is no showing that at the said time the patients received the prescriptions that the same were given to them to satisfy their narcotic craving or appetite.

The Court: I will deny the motion and let the motion and let the matter go to the jury. I think this is a very

slender case, offhand, but I think there is enough to go to the jury.

(Thereupon, the conference on instructions was had, after which the jury returned to the courtroom and counsel argued to the jury; after which the Court charged the jury as follows:)

. . . . . .

EXCERPT FROM NARCOTIC CASE REPORT—October 31, 1955

Testimony of Witnesses:

[fol. 415A] K. C. RUDD, Narcotic Agent, will testify that on Sept. 21, 1955, he, assisted by Narcotic Agent E. S. Waters and Florida State Narcotic Inspector, R. R. Bellinger, began an active investigation of the narcotic activities of Dr. Harry Needelman and drug store operator Walter Waxman, the defendants in this case.

That on September 22, 1955, accompanied by officers Waters and Bellinger he did, in the course of an official visit to the Medical Arts Pharmacy, 1500 Washington Avenue, Miami Beach, find Exhibits 5, 6, 7, 8, 9, 10, 11, and 12 in the narcotic prescription file of that drug store; which file was handed to him by pharmacist David Komisarow, who was the pharmacist on duty and in charge at that time at that store.

That each of the 43 purported prescriptions making up Exhibit #5 and each of the 26 prescriptions making up Exhibit #6, each calling for 24 1 gr. Codeine tablets, are a product of 'offset' printing including the signature 'Harry Needelman' and printed up on blanks of Dr. Needelman's. That all of the prescriptions bear one date of August 6, 1955, and that all the prescriptions bear the written-in notation 'To be filled'; immediately following each such notation is the date on which the narcotics were dispensed and the prescriptions filed. That all the writing on all the prescriptions, including the names of the alleged patients, the narcotic and amounts, and the signature of Exhibits 7, 8, 9, 10, 11, 12c, d, e, f, and g, are in the handwriting of and were written out (less dates) by defendant Needelman. That

practically all those Exhibits, the same as in the case regard Exhibits 5 and 6, bear the date August 6, 1955, and other date when filled and filed.

That upon finding the above Exhibits, they were removed and seized from the Medical Arts Pharmacy by him (Rudd) who, together with the other officers, initialed those Exhibits for future identification.

That on the same date, September 22, 1955, after finding and seizing the above described prescriptions and previously having found and seized the four prescriptions making up Exhibit 16 on September 21, 1955, he (Rudd), accompanied by officers Waters and Bellinger, proceeded to the office of Dr. Harry Needelman at Miami Beach, were he (Rudd) exhibited his official credentials to Dr. Needelman, introduced officers Waters and Bellinger, and told Dr. Needelman that he was making an official inspection investigation of Dr. Needelman's narcotic activities in con-[fol. 415B] nection with his (Needelman's) being registered under the narcotic laws as a physician-dealer in narcotics.

That he (Rudd) further stated to Dr. Needelman that in the course of said inspection and investigation, he was going to ask the doctor certain specific questions in regard his narcotic activities and particularly in regard the persons Abe Bruches, Lottie Bruches, Fidel Garcia, Gerald Miller, Harvey Sachs, and Alice Donaiuto, Dr. Needelman being asked by Rudd if he had any objection to the inspection and investigation and if he (Needelman) had any objection or was unwilling to answer any questions put to him in regard the above persons, to which Dr. Needelman answered 'Why no, of course not, I have no objection, why should I'.

That he (Rudd) then laid out in front of Needelman Exhibits 5, 6, 7, 8, 9, 10, 11, 12, and 16, Rudd then saying to Dr. Needelman that it was in regard the persons named in those prescriptions and the prescriptions themselves that he wished to ask Dr. Needelman about.

That at that point Dr. Needelman voluntarily and spontaneously stated that he had left those prescriptions with 'those addicts' when he left for Europe. That they were

all addicts and had used opium, heroin, morphine and dilaudid, that he gave it to them to keep them comfortable, and so that they could keep going and stay on their jobs and so that they would not go out on the streets looking for heroin or dilaudid. That he (Needelman) gave the Bruches codeine because they had been addicted to that drug for some time, and that they were suffering from asthma. That he gave the others Methadon because it would hold them comfortable and was the least addicting of narcotic drugs. That he (Needelman) further voluntarily stated that he thought it was wonderful that 'those addicts' (Needelman's expression) were only taking Methadon and not using any heroin or dilaudid at exorbitant prices.

That Rudd then asked Dr. Needelman if he had ever discussed with 'those addicts' the possibility of them going to a U.S.P.H. Hospital at Lexington for cures of their addiction and Dr. Needelman replied that they couldn't or wouldn't go, that they worked for a living but that they had talked about it.

As to the Bruches' prescriptions Dr. Needelman answered that, upon departing from his office and practice for several weeks in Europe, he left all of the Bruches' prescriptions of this case (less any dates noted on them) with Walter Waxman, druggist-operator of the Medical Arts Pharmacy. That the Bruches' prescriptions were to be filled in that store when either of the Bruches appeared there during his absence. That it was his suggestion to Waxman that the two dates be entered onto the prescriptions.

[fol. 415(')] That it was his instructions and request to Waxman that a $5.00 fee be collected for him (Needelman) by the druggists each time one or both of the Bruches obtained the narcotics as called for in the Bruches' prescriptions, identified herein as Exhibits 5, 6, and 13a.

That on that very day of September 22nd, and just a short while previous to Rudd's visit to his office Needelman had gone to the Medical Arts Pharmacy and there collected $175.00 cash plus all unused Bruches prescriptions (Exhibits 13a and b).

That Dr. Needelman did then, without protest, at request of Agent Rudd, surrendered Exhibits 13a and b,

which are identical to Exhibits 5 and 6 except that they do not contain any date or dates nor the notation 'To be filled', as were found on the prescriptions in this case which were filled.

That he (Needelman) stated that the reason he left the Bruches' prescriptions at the Medical Arts store instead of at his office was because his office was usually closed before Abe Bruches finished his daily employment.

That Needelman admitted having had all of the Bruches' prescriptions produced by 'offset' printing through the Lily Company's salesman calling at the office.

That Dr. Needelman also surrendered up Exhibits 13b, c, d, e, and f, to Agent Rudd, which were remaining on hand at Needelman's office upon his return from Europe on or about September 22, 1955.

That Dr. Needelman acknowledged and explained that he had left Exhibits 7, 8, 9, 10, 11, 13b, c, d, e, f, 15 and 16 in the office girl's reception desk in his outer office, undated, and that each time anyone of the persons named as patients in those prescriptions came to the office for a 'treatment' that they were to be given one of those prescriptions as 'treatment', that the date August 6, 1955, as well as the date on which the prescriptions were given, were to be inserted and written onto the face of the prescription together with the words 'To be filled' immediately following the date on which persons actually obtained the prescriptions, and that the usual fee of $10.00 and $5.00 set by Needelman was to be collected from those people named in the prescriptions for each prescription and that the money thus collected was to be deposited in the bank to his (Needelman) personal account.

That upon request of Agent Rudd, Needelman did produce for the examination of Agent Rudd, and officers Waters and Bellinger, his office 'Daily Book' which was checked against issued prescriptions named herein above and was found to be substantially correct as to the number handed out by the office girls during the period August 6 to [fol. 415D] September 22, 1955. That in explanation to notations in his 'Daily Book' of figures such as $20.00 for some instances in regard the prescriptions in this case, Dr.

Needelman explained that there were occasions when one of the persons getting the prescriptions such as Fidel Garcia was unable to come to his office the day or so following one visit and that he was given two prescriptions for different dates which he, Needelman, regarded as two treatments and so stated to the officers thereby a double fee totaling $20.00 was collected for two prescriptions.

That he admitted to Agent Rudd he had not told the above named addicts when or on what dates to appear at his office or the drug store for their supply of narcotics, that he just assumed they would be coming back for more prescriptions during his absence in Europe and that he told 'those addicts' before he left town that the prescriptions would be there for them.

That he was asked by Agent Rudd if he (Needelman) knew that codeine, methadon and demerol were narcotics and that each of them were capable of maintaining addiction and that Dr. Needelman replied in the affirmative.

That he was asked by Agent Rudd if he (Needelman) believed, in view of the amounts dispensed through the prescriptions in this case to 'those addicts', that they were addicted to those drugs and he (Needelman) replied in the affirmative.

That he (Needelman) was asked by Agent Rudd if it was his belief as a Doctor that if these addicts, the Bruches, Fidel Garcia, Gerald Miller, Harvey Sachs, and Alice Buonaiuto were stopped 'right now' from using these drugs would they suffer physical withdrawal symptoms and could they be cured, and Dr. Needelman did reply that he imagined they would experience symptoms of withdrawal and that they probably could be cured with the exception that it was his belief (Needelman's) that Abe Bruches had been using narcotics so long he did not believe he could be cured.

That in answer to Agent Rudd's specific question Dr. Needelman did acknowledge that 24 tablets of any narcotics such as Codeine or Methadon according to the size prescribed is known to be intended in the medical profession as 24 separate doses.

Needelman was then asked by specific question by Agent Rudd, 'In your opinion, as a Medical Doctor, has it been possible and is it possible for each of these addicts, Gerald

Miller, Harvey Sachs and Alice Buonaiuto to be withdrawn from the Methadon they have been using up to this time without them suffering any ill effect other than withdrawal discomfort?", and that Needelman replied 'It is possible, [fol. 415½] but they say they need it'.

That on the occasion of the September 22nd visit to Dr. Needelman's office by Agent Rudd as per testimony herein and above the investigation and inspection at his office could not be completed then and there on that date due to the absence from Needelman's office of both of the girls, Lillian Fredrick and Sally Rossman and Dr. Needelman being unable, at that visit, to produce his last required annual narcotic inventory.

That on September 23rd, 1955, Agent Rudd, accompanied by Agent Waters, again visited Dr. Needelman's office for the purpose of continuing this investigation and inspection of Dr. Needelman's narcotic activities. At that time it was ascertained that Dr. Needelman did not keep any narcotic dispensing record for reasons as he stated that he did not dispense any narcotics at all to any patients to take home with them. That in his regular practice and attention to patients, other than the addicts named herein above, he did not find it necessary to administer at his office any more than one dose of narcotics if such sedation was indicated at all.

That upon being shown six Miami Beach Police Department photos by Agent Rudd, Dr. Needelman did identify and name the photos as being pictures of Fidel Garcia, Gerald Miller, Harvey Sachs, Alice Buonaiuto, Abe Bruches and Lottie Bruches and that they were the same persons named in the prescriptions in this case.

That on September 23, 1955, Agent Rudd, accompanied by Agent Waters, met and interviewed Sally Rossman, an office girl receptionist, employed in Dr. Needelman's office. That she stated and identified, by means of her handwriting, that she wrote in the notation 'To be filled' on all of the prescriptions listed herein as Exhibits 7, 8, 9, 10, 11, 13e, 13e, and 13f, as per instructions of Dr. Needelman upon his departure from Miami Beach on or about August 6, 1955.

That pursuant to instructions from Dr. Needelman, she also wrote onto practically all of the prescriptions listed

herein as Exhibits 7, 8, 9, 10, 11, 15 and 16 the date August 6, 1955, and by means of the same identification can identify which of those prescriptions she inserted the date following the words 'To be filled' which was the date she furnished prescriptions to the above named addicts, as they came to Dr. Needelman's office for their prescriptions.

That she is but recently out of school and has worked for Dr. Needelman but a short time, is not a professional nurse [fol. 415F] and in this case she explains her actions as merely following the instructions of Dr. Needelman and/or office girl Lillian Fredricks.

That on September 27, 1955, Agent Rudd, accompanied by officers Waters and Bellinger, again visited Dr. Needelman's office for the purpose of interviewing office girl Lillian Fredricks, who up to that time had been absent from that office on a vacation. That she also, as had Dr. Needelman and Sally Rossman, identified, without assistance, each of the above described photos.

That by means of her own handwriting notations she identified the prescriptions of this case which she personally had inserted the second date where it appears on each of the prescriptions, which to her represents the day that the prescriptions were furnished to the persons named on the prescriptions.

That she is not a professional nurse and that in furnishing the prescriptions as described herein she merely followed instructions to her by Dr. Needelman at the time of his departure on or about August 6, 1955.

Agent Rudd will further testify that on September 28, 1955, assisted by officers Waters and Bellinger and during another official visit to the Medical Arts Pharmacy, 1500 Washington Avenue, Miami Beach, Florida, in connection with this investigation, defendant Walter Waxman did identify and name each one of the photos described herein and above of Abe and Lottie Bruches, Fidel Garcia, Gerald Miller, Harvey Sachs, and Alice Buanaiuto. That he (Waxman) stated that on the date (August 6, 1955) Dr. Needelman left Miami Beach for Europe Needelman brought to him at his drug store the Abe and Lottie Bruches' prescriptions and other numerous prescriptions

such as for Garcia, Miller, Sachs, etc., Needelman saying to him (Waxman) that they were his patients and anytime they came to the store to complete the filling out by dating one of the prescriptions and to charge the persons at the rate of $2.50 each for the Bruches' prescriptions and $10.00 each for any of the others, dispense the narcotics, and hold his (Needelman's) fee for him until his return from Europe.

That he (Waxman) objected to handling the prescriptions other than for the Bruches, but did agree to handle the Bruches' prescriptions as per Dr. Needelman's request. Waxman stating to Agent Rudd that he did it for the Bruches because the narcotics prescribed was only Codeine, but that he told Dr. Needelman that he did not want anything to do with handling of the Methadon prescriptions. [fol. 415G] That in accordance with Dr. Needelman's request he did dispense 24 1 gr. Codeine tablets each time Abe Bruches called at the store for his narcotics during the period August 6 to September 22, 1955, also occasionally in the same amount for Lottie Bruches.

That during the period in question, the Codeine narcotics represented by prescriptions listed herein as Exhibits 5 and 6 was dispensed to Abe and Lottie Bruches by himself or his hired pharmacists in his absence and on his (Waxman's) instructions and authority to them. That on September 22, 1955, $175.00 collected from the Bruches was handed over to Dr. Needelman by Mrs. Waxman.

That as a professional pharmacist he knows that the words Methadon and Dolophine are different trade names of one narcotic drug known as Amidone.

That the narcotics dispensed to the Bruches and all other prescriptions listed herein as Exhibits 7, 8, 9, 10, 11, was dispensed from the narcotic stock of his drug store, the Medical Arts Pharmacy, which stock of narcotics were true narcotics obtained by him in original stamped packages from lawful wholesale narcotic drug dealers pursuant to Exhibits 2, 3, and 4 of this case.

That upon discussing all of the prescriptions in this case with him (Waxman) prior to departing for Europe, Dr. Needelman told him that 'these addicts' were registered with the Bureau of Narcotics.

That defendant Walter Waxman stated to Agent Rudd that he 'most have been stupid' to have accommodated Dr. Needelman in regard prescriptions in this case. That all of the Exhibits 5-16 inclusive, which were properly initialed by officers Rudd, Waters and Bellinger at the time of seizing, have been in Agent Rudd's possession to date.

E. S. Waters, Narcotic Agent, will testify to the same facts in this case as does Agent Rudd.

R. R. Bellinger, Florida State Narcotic Inspector, will testify to the same facts in this case as does Agent Rudd and Agent Waters with exception that he was not present on occasion of the second visit to Dr. Needelman's office on September 23rd, 1955.

Recommendation: Prosecution as to both defendants.

E. S. Waters, Narcotic Agent K. C. Rudd, Narcotic Agent

[fol. 416] Minute Entry of Argument and Submission—October 21, 1958 (omitted in printing)

[fol. 417]

In the United States Court of Appeals

For the Fifth Circuit

No. 17022

Harry Needelman, Appellant,

versus

United States of America, Appellee.

Appeal from the United States District Court for the Southern District of Florida.

Before Rives, Tuttle, and Jones, Circuit Judges.

OPINION—November 14, 1958

RIVES, Circuit Judge: The appellant, a physician, and Walter Waxman, a druggist, were first tried on an indictment for conspiracy to violate Title 26, United States Code, Section 4705(a), that is, to sell certain narcotic drugs, to wit, codeine, methadon, and demerol, not in pursuance of the required written orders. The result was a mistrial.

[fol. 418] Subsequently, another indictment containing fifteen counts was returned against the appellant alone, charging him with substantive violations of the same Section. The first five counts named Gerald Miller, the next five counts named Fidele Garcia, and the last five counts named Alice Buonaiuto as the persons to whom methadon was sold or caused to be sold. Except for the names of such persons and the dates of sale, all fifteen counts were identical.

Without objection, the two cases were consolidated for trial. At the conclusion of the Government's evidence, the court granted a motion for judgment of acquittal of both defendants on the conspiracy charged, but denied Dr. Needelman's like motion on the substantive counts. The court then sustained Dr. Needelman's motion to strike all of the testimony of conversations had between the narcotic agent and Waxman outside the presence of Dr. Needelman and directed the jury to disregard any such testimony. The Government offered no additional evidence, but Dr. Needelman introduced a number of witnesses and testified in his own behalf.

At the conclusion of all the evidence, Dr. Needelman again moved for judgment of acquittal. The court denied the motion, stating in the jury's absence from the courtroom, "I think this is a very slender case, offhand, but I think there is enough to go to the jury."

The jury returned a verdict of guilty as to each of the fifteen counts. The court thereafter granted a motion for new trial as to the last five counts which named Alice [fol. 419] Buonaiuto as the purchaser; and those counts, upon motion of the Government, were dismissed by the

court. The court fined the appellant a total of $5,000.00 and placed him on probation for three years.[1]

After the mistrial on the conspiracy charge, but prior to the time of the consolidated trial, the appellant moved the court:

> ". . . for an Order permitting them to inspect the books, papers, documents, memoranda and objects and particularly the contemporaneous notes made by the Government witness, Kenneth Rudd, who has previously testified in said cause and who is a material witness for the Government in said cause, made by the said Kenneth Rudd during his investigation and preparation for trial of said cause, and which said contemporaneous notes have already been referred to by the said Rudd in the previous trial of said cause, and by which testimony it was shown that said contemporaneous notes prepared by the said Rudd were of the events, activities related to his said testimony, and that the inspection and copying of said contemporaneous notes made by the said Rudd are material and necessary for the defendants to prepare their defense."

[fol. 420]. The motion was denied. Again, after the narcotic agent Rudd had testified on direct examination on the second trial, had been cross-examined by appellant's counsel, and was on redirect examination by the Government, a short recess was had, the jury retired from the courtroom, and, we assume in response to a renewal of the motion, the court ruled: "I will deny the request for the notes, because they may involve many things. You may see the case report."

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[1] At the time of sentencing, the Judge stated:

"The Medical Association may or may not deprive him of his license. I hope they don't. I hope they think he should not be deprived of his license because undoubtedly he is a skilful Doctor. I don't know. I am not going to go back on the jury's verdict, but I personally feel that he was exceedingly careless in any event, and it is possible that the jury felt that way and found him guilty for that reason. I don't know. They shouldn't have on that basis, but being human beings they might have done so."

The questions presented for decision on appeal are whether the court erred in denying the defendant's motion for judgment of acquittal, and whether the court erred in denying the defendant's motion to be allowed to inspect the contemporaneous notes made by narcotic agent Rudd.

The issue of guilt or innocence was primarily that of good faith, that is, whether in good faith the narcotic drugs were dispensed by the defendant as a physician to his patients "in the course of his professional practice only." The theory of the Government's case was that the pre- [fol. 421] scriptions to the three persons named in the indictment were not issued for the relief of pain but to keep narcotic addicts comfortable. In its oral charge to the jury, the court defined the issue as follows:

> "Good faith is a matter for your determination, whether or not he did act in good faith; and good faith means that he has got to act in an honest endeavor to carry on his profession. Now, if he made a mistake or he was foolish or inept or something like that, that

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[*] 26 U.S.C.A. §4705(e). The applicable subsections read:

"(a) *General requirement.*—It shall be unlawful for any person to sell, barter, exchange, or give away narcotic drugs except in pursuance of a written order of the person to whom such article is sold, bartered, exchanged, or given, on a form to be issued in blank for that purpose by the Secretary or his delegate.

. . .

"(c) *Other exceptions.*—Nothing contained in this section, section 4735, or section 4774 shall apply—

"(1) *Use of drugs in professional practice.*—To the dispensing or distribution of narcotic drugs to a patient by a physician, dentist, veterinary surgeon, or other practitioner registered under section 4722, in the course of his professional practice only: *Provided*, That such physician, dentist, veterinary surgeon, or other practitioner shall keep a record of all such drugs dispensed or distributed, showing the amount dispensed or distributed, the date, and the name and address of the patient to whom such drugs are dispensed or distributed, except such as may be dispensed or distributed to a patient upon whom such physician, dentist, veterinary surgeon, or other practitioner shall personally attend; and such record shall be kept for a period of two years from the date of dispensing or distributing such drugs, subject to inspection, as provided in section 4773."

wouldn't be a breach of good faith; but if he sold drugs to an addict, a known man, having good reason to know a man or woman to be an addict, and sold only for the principal purpose of supplying the addict with these drugs that he craved, that would not, of course, be in good faith.

"So, as both attorneys have told you, the issue in this case is good faith. Did Dr. Needelman act in good faith in issuing these prescriptions?"

The appellant does not question the settled proposition of law that in order for a physician to come within the exception to the statute, 26 U.S.C.A. 4705(e), note 2, *supra*, the narcotic drugs must have been dispensed or distributed to a patient or patients by the physician in good faith in the course of his professional practice only.[4]

[fol. 422] In reviewing the denial of the motion for judgment of acquittal, the evidence must be considered in the light most favorable to the Government.[5] So considered, the jury could reasonably find the following facts. Dr. Needelman was to leave for Europe on August 6, 1955, for an extended vacation. He had known a Dr. Szekely, who had practiced medicine in New York for a considerable number of years, had taken the Florida Medical Board examination, and was awaiting his certificate to practice in Florida. Dr. Szekely came to Dr. Needelman's office about a week prior to Dr. Needelman's departure to become acquainted with Dr. Needelman's patients. Dr. Szekely's Florida certificate did not arrive by the time Dr. Needelman was to leave, so Dr. Needelman made arrangements with Dr. Grier, a licensed physician with a Government narcotic license, to take charge of the office

[4] See *McBride* v. *United States*, 5th Cir. 1955, 225 F. 2d 249, 253, construing Section 2554 of the 1939 Internal Revenue Code which is substantially the same as Section 4705 of the 1954 Internal Revenue Code. See also Linder v. United States, 1925, 268 U.S. 5.

[5] Mortensen v. United States, 1944, 322 U.S. 363, 374; Glasser v. United States, 1942, 315 U.S. 60, 80; Lloyd v. United States, 5 Cir. 1955, 226 F. 2d 9, 13; Vick v. United States, 5th Cir. 1954, 216 F. 2d 228.

until Dr. Szekely received his certificate. On August 20, two weeks after Dr. Needelman's departure, Dr. Szekely's license to practice medicine in Florida was issued. All of the questioned prescriptions were delivered to the patients after Dr. Needelman had left on his vacation, but peculiarly neither Dr. Szekely nor Dr. Grier was called as a witness.

It was stipulated that codeine, demerol, and methadon are narcotic drugs as defined in Title 26, United States Code, Section 4731. Miss Sally Rossman testified that she was employed by Dr. Needelman from June 1955 through November 1955 doing laboratory work, assisting the Doctor and covering the front desk when needed. [fol. 423] She identified thirty one prescriptions which Dr. Needelman signed and left with her and Miss Fredericks, the other nurse in the office, with instructions that they were to be kept locked in a drawer of a desk, and when the patients whose names appeared on the prescriptions came in and paid a prescribed fee, varying from five to ten dollars, a prescription was to be delivered to the patient. At the time of delivery, she would fill in on the prescription that date as the date on which it was "to be filled." Those three words were written by her at Dr. Needelman's direction prior to his departure. Among such patients were the three named in the indictment. Miss Rossman was extensively cross-examined in an effort to show that the prescriptions were delivered only at the direction of Dr. Szekely or Dr. Grier, and did waver somewhat in her testimony. The jury, however, could have reasonably believed that payment of the required fee was all that was necessary for a patient to receive a prescription for narcotic drugs signed by Dr. Needelman.

Miss Lillian Fredericks, the other nurse who had worked in Dr. Needelman's office, identified some twenty-nine additional prescriptions for narcotic drugs signed by Dr. Needelman and which bore her handwriting as to the dates on which they were to be filled. In general, her testimony was similar to that of Miss Rossman.

In addition, Dr. Needelman had left at the Medical Arts Pharmacy, of which Walter Waxman was proprietor, some seventy five signed prescriptions for narcotic drugs, some

to be delivered to Abe Bruches and some to his wife, Lottie Bruches. As each prescription was delivered, $2.50 would [fol. 424] be collected and retained for Dr. Needelman, purportedly, however, to apply on an old bill owed by the Bruches to Dr. Needelman rather than for the prescriptions themselves.

Narcotic agents Rudd and Waters testified to examining the narcotic prescription file at the Medical Arts Pharmacy on September 22, 1955, just after Dr. Needelman's return from Europe, and to interviewing Dr. Needelman. Each testified that, after being warned and informed as to his rights not to give incriminating evidence against himself, Dr. Needelman talked freely, and stated that he knew the patients in question were narcotic addicts and that the $175.00 left at the drug store by the Bruches was for prescriptions left there by Dr. Needelman at the rate of $2.50.

Dr. Needelman denied having made any such admissions, and testified and introduced evidence tending to show that the patients were suffering pain and that the prescriptions were signed and left by him in the course of his professional practice only. There was additional evidence on either side of the issue. Enough has been recited, however, to demonstrate that, considered in the light most favorable to the Government, there was sufficient relevant evidence from which the jury could reasonably have believed beyond a reasonable doubt that Dr. Needelman did not in good faith dispense or distribute the narcotic drugs to patients in the course of his professional practice only. The motion for judgment of acquittal was therefore properly denied.

[fol. 425] Narcotic agent Rudd did not use his memoranda or notes to refresh his recollection while testifying, but admitted that he refreshed his recollection from them before testifying. Such memoranda or notes made contemporaneously by the witness for the purpose of refreshing his own recollection are not strictly within the rule of *Jencks* v. *United States*, 1957, 353 U.S. 657, or of the statute passed to meet that decision, 18 United States Code 3500, which relate to formal written statements or reports made by the witness and signed or otherwise adopted or approved by him. Unlike such statements or

reports, the mere memoranda or notes could not be directly introduced for impeachment purposes, but might be used as a basis for cross-examining the witness. The case of *Goldman v. United States*, 1942, 316 U.S. 129, holding that it is discretionary with the trial court to require or not to require a witness to produce memoranda or notes from which he had refreshed his recollection before taking the stand, was not overruled by *Jencks, supra.*[1] In our opinion, there was no abuse of discretion in denying permission to examine Rudd's memoranda or notes, but permitting appellant's counsel to see the case report.

Finding no reversible error in the record, the judgment is affirmed.

[fol. 426]

IN UNITED STATES COURT OF APPEALS

No. 17022

HARRY NEEDELMAN,

versus

UNITED STATES OF AMERICA.

JUDGMENT November 14, 1958

This cause came on to be heard on the transcript of the record from the United States District Court for the Southern District of Florida, and was argued by counsel;

On Consideration Whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this case be and the same is hereby affirmed.

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[1] See our recent opinion of Lambert v. United States, No. 17,143, 5th Cir. 1958, ____ F. 2d ____. See also, Jencks v. United States, 1957, 353 U.S. 657, at pages 668, 674, 680.

[fol. 427]

IN UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 17,022

HARRY NEEDLEMAN, Appellant,

vs.

UNITED STATES OF AMERICA, Appellee.

Appeal from the United States District Court for the Southern District of Florida, Miami Division

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PETITION FOR REHEARING. Filed December 2, 1958

To the Honorable Judges of the United States Court of Appeals for the Fifth Circuit:

Comes now your Petitioner, Harry Needleman, and respectfully petitions this Court to grant him a rehearing of his appeal herein and for grounds thereof would show unto the Court that in its judgment and opinion rendered herein, the Court failed to take into consideration the following facts:

[fol. 428]

1.

That the case of *Goldman* v. *U. S.*, 316 U. S. 129, cited by this Court in its opinion is inapplicable. This case is to the effect that where a witness does *not* use his notes in court, a party has no absolute right to have them produced and to inspect them. However, in the case at bar, the record shows that the court instructed the witness Rudd to "bring in the records after you are excused from the witness stand" (Tr. 232) and that after bringing in said records and referring thereto during his testimony he continued to testify therefrom (Tr. 248, 249).

2.

That the government failed to offer into evidence prescriptions allegedly issued to Fidel Garcia on August 8, 12, 14 and 17, 1955, as proof of the charges contained in counts six, eight, nine and ten of the indictment.

3.

That it affirmatively appears from the testimony herein that the physical condition of Gerald Miller and Fidel Garcia, at the time they were issued any prescriptions, was such that they required such prescriptions for the relief of pain.

4.

That the government failed to show that the physical condition of Gerald Miller and Fidel Garcia at the time they were issued the prescriptions involved in the first ten counts of the indictment was such that they did not require such prescriptions for the relief of pain.

[fol. 429]

5.

That the medical record of Gerald Miller (defendant's exhibit 9) affirmatively shows that he received a diathermy treatment on each occasion that he obtained a prescription.

6.

That the record shows that Garcia was the only patient ever able to get a prescription from Dr. Needelman's office, during his absence, without consultation with either Dr. Szekely or Dr. Grier.

Respectfully submitted,

Ernest E. Roberts, Attorney for Harry Needelman.

[fol. 430]

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 17,022

[Title omitted]

Appeal from the United States District Court for the Southern District of Florida

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PRELIMINARY ORDER ON PETITION FOR REHEARING—January 5, 1959

Before Rives, Tuttle and Jones, Circuit Judges.

Per Curiam:

Certiorari having recently been granted in several cases,[1] the decision of one or more of which may affect the disposition of this case, the parties may, if they see fit, show cause why the Court should not await the decision of one or more of said cases by the Supreme Court before ruling on the petition for rehearing.

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[1] Certiorari granted December 8, 1958, in the following: No. 435, Lev v. United States, No. 436, Wood v. United States, No. 437, Rubin v. United States, No. 451, Rosenberg v. United States, No. 457, Ingram v. United States, No. 471, Palermo v. United States (Oct. Term 1958, 27 LW 3175, 3176). Certiorari granted December 15, 1958, in No. 489, Pittsburgh Plate Glass Co. v. United States, Oct. Term 1958, 27 LW 3186.

[fol. 431]

IN UNITED STATES COURT OF APPEALS

[Title omitted]

ORDER DENYING REHEARING—July 6, 1959

It is ordered by the Court that the petition for rehearing filed in this cause be, and the same is hereby, denied.

[fol. 432] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 433]

SUPREME COURT OF THE UNITED STATES

No. 278, October Term, 1959

[Title omitted]

ORDER ALLOWING CERTIORARI—October 12, 1959

The petition herein for a writ of certiorari to the United States Court of Appeals for the Fifth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.